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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Implementation of the Program Fraud Civil Remedies Act of 1986; Correction

AGENCY: Office of the Secretary, USDA.
ACTION: Correction.

SUMMARY: The Secretary of Agriculture is redesignating 7 CFR part 1, entitled "Subpart K—Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986," as "Subpart L—Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986."

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: David C. Rector, Deputy Director for Policy, Office of Finance and Management, room 4094–S, U.S. Department of Agriculture, Washington, DC 20250, Telephone No. (202) 720–8748.

SUPPLEMENTARY INFORMATION: The USDA rule implementing the Program Fraud Civil Remedies Act was published in final form on Thursday, March 7, 1991 (56 FR 9581 et seq.), erroneously bearing a heading designating it as subpart K of 7 CFR part 1, subtitle A. Therefore, the rule is being redesignated as "subpart L—Procedures Related to Administrative Hearings under the Program Fraud Civil Remedies Act of 1986."

List of Subjects in 7 CFR Part 1

Claims, Civil fraud.

PART 1 — [CORRECTED]

Accordingly, in title 7 Code of Federal Regulations, part 1 of subtitle A of title 7 is hereby amended by redesignating subpart K, §§ 1.301 through 1.346, as subpart L.

(Authority: 31 U.S.C. 3801–3812)

Done this 29th day of January 1992 at Washington, DC.

Edward Madigan,

Secretary of Agriculture.

[FR Doc. 92–2557 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–90–M

Food and Nutrition Service

7 CFR Parts 271, 278 and 279

[Amdt. No. 334]

Food Stamp Program: Penalties for Unlawful Use or Acceptance of Food Stamp Coupons

AGENCY: Food and Nutrition Service, USDA.
ACTION: Final rule.

SUMMARY: The Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. No. 101–624; title XVII) amended the Food Stamp Act of 1977, as amended, (the Act) by making a number of modifications and additions to the penalties imposed against firms and persons for unlawful use or redemption of food stamp coupons. The purpose of this rule is to implement these statutory changes.

This final rulemaking provides for increased civil money penalties for trafficking in food coupons; permanent disqualification from the Food Stamp Program for accepting food coupons in exchange for firearms, ammunition, explosives or controlled substances; fines for the acceptance of loose coupons of denominations not authorized to be used in changemaking; and, fines against unauthorized persons who illegally accept or redeem food coupons. In addition, the rulemaking provides for increased criminal penalties against persons who unlawfully issue, redeem, use, transfer, acquire, alter or possess food coupons or food stamp benefit access devices. These changes are intended to broaden and strengthen anti-fraud provisions in the regulations for taking action on evidence of unauthorized use and redemption of food stamps and to improve the integrity of the Food Stamp Program.

DATES: This action is effective February 1, 1992. It should be noted that the statutory changes reflected in §§ 271.2 and 271.5 became effective November 28, 1990, as specified in Public Law No. 101–624.

FOR FURTHER INFORMATION CONTACT: Dwight Moritz, Coupon and Retailer Branch, Benefit Redemption Division, Food and Nutrition Service, Alexandria, Virginia 22302, (703) 305–2419.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291 and Department Regulation No. 1512–1

The Department has reviewed this rule under Executive Order 12291 and Department Regulation No. 1512–1 and the rule has been classified as "not major". The rule will affect the economy by less than $100 million a year. The rule is not likely to result in a major increase in costs or prices for consumers, industries, government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Although this rule will affect the business community, the effect would be of a non-economic nature and is not expected to be significant.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983, or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. No. 96–354). The Administrator of the Food and Nutrition Service has certified that this action does not have a significant economic impact on a substantial number of small entities. The rule would have almost no impact on the vast majority of authorized firms, most of whom follow the program rules carefully.

Paperwork Reduction Act

This rule does not contain recordkeeping or reporting requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. No. 101–624, title XVII) amended the Act by making a number of modifications and additions to the penalties imposed against firms and persons for unlawful use or redemption of food stamp coupons. A proposed rule dealing with these various modifications was published at 56 FR 23484 on May 21, 1991 and provided the public with a 30-day period to submit comments on the proposed provisions. A total of six comments were received regarding this proposed rule.

The major concerns raised by the commenters are discussed below. For a full explanation of the provisions of this final rule, the reader should refer to the preamble of the proposed rule, which was published at 56 FR 23484–87 on May 21, 1991.

This final rulemaking provides for increased civil money penalties for trafficking in food coupons; permanent disqualification from the Food Stamp Program for accepting food coupons in exchange for firearms, ammunition, explosives or controlled substances; fines for the acceptance of loose coupons of denominations not authorized to be used in changemaking; and fines against unauthorized persons who illegally accept or redeem food coupons. In addition, in accordance with the nondiscretionary provisions of Public Law No. 101–624, the rulemaking provides for increased criminal penalties against persons who unlawfully issue, redeem, use, transfer, acquire, alter or possess food coupons or food stamp benefit access devices.

Fines for the Acceptance of Loose Coupons (Section 278.6(l))

Section 1744 of Public Law No. 101–624 amends section 12(e) of the Act (7 U.S.C. 2021(e)) by providing the Secretary with the discretion to impose a fine against any retail food store or wholesale food concern that accepts food coupons that are not accompanied by the corresponding book cover (hereinafter referred to as "loose coupons"). This provision is not applicable to any denomination of coupons authorized by the Food Stamp Program regulations to be used for changemaking in food stamp transactions. Moreover, as one commenter pointed out, this provision is not applicable to coupons accepted from authorized providers of meals for the homeless, as specified in § 278.2(c) of the current regulations. In response to this comment, a technical amendment has been made to § 278.6(l) to reference this additional exception and correct the original oversight in the proposed rule.

The law provides the Secretary with the authority to establish the amount of fines imposed. Section 278.6(l) of this rule provides that the fine assessed against a firm found to have accepted loose coupons shall be $500 per investigation plus an amount that is equal to double the face value for each loose coupon that has been illegally accepted during the course of the investigation. The fine would have to be paid within 30 days of the firm's receipt of notification from FNS to pay the fine.

This rule also revises § 278.1(k) to provide that FNS may, consistent with current policy regarding a firm's business integrity, withdraw the authorization of any firm, including any location that is under the same ownership, that has failed to pay such a fine within 30 days.

The Department received very few comments on this provision. One commenter stated that the sanction/fine was too harsh given the context in which these types of violations usually occur. The commenter pointed out that the food industry in general has a very high rate of personnel turnover and that inadvertent errors on the part of firm personnel are bound to occur. The Department recognizes that this is sometimes the case. Consequently, as discussed in the proposal, fines for the acceptance of loose coupons will be imposed only when a clear pattern of abusive acceptance of loose coupons has been established and documented during the course of a formal investigation. The Department believes that a deterrent to prevent the illegal circulation of coupons as currency in places where such use of coupons has become common practice is necessary at this time and believes that the prescribed penalty is appropriate.

Another commenter acknowledged that the Department has the statutory authority to establish the amount of the fine that may be imposed on violators that accept loose coupons. However, this commenter argued that the Department has overstepped its statutory authority by asserting its prerogative to withdraw the authorization of any firm, including any location that is under the same ownership, that has failed to pay the fine in 30 days.

The Department does not agree with this commenter and believes that this provision will convey to firm management a sense of the seriousness with which the Department regards these violations while ensuring that the fines are paid in a timely manner. As in the proposed rule, the Department stresses here that administrative and judicial review are available to food concerns which are assessed fines under section 12 of the Act. Therefore, the penalties proposed for the illegal acceptance of loose coupons have been adopted as final with no changes.

Fines for Unauthorized Third Parties That Accept Food Stamps (Section 278.6(m))

Section 1745 of Public Law No. 101–624 provides the Secretary with the authority to impose a fine against any person not authorized to accept and redeem food coupons for violations of any provision of the Act or the program regulations, including the acceptance of food coupons. The Department interprets the term "person" to include a sole proprietorship, partnership, corporation or other legal entity, in addition to an individual.

Section 278.6(m) provides that the amount of such fine shall be $1,000 for each violation plus an amount that is equal to three times the face value of the coupons accepted.

No comments were received on this provision; thus, the amendment to § 278.6(m) is incorporated in this final rule with no changes.

Civil Money Penalties in Lieu of Permanent Disqualification for Trafficking

The Hunger Prevention Act of 1988, Public Law No. 100–435, provided the Secretary with the discretion to impose a civil money penalty (CMP) of up to $20,000 in lieu of permanent disqualification of a firm for trafficking in food coupons or other program benefit instruments if the Secretary determines that there is substantial evidence that the firm had an effective policy and program in effect to prevent violations of the Act and the program regulations.

Section 1743 of Public Law No. 101–624 changes the trafficking CMP to $20,000 per trafficking violation, rather than the current maximum of $20,000 per investigation. The law, however, specifies that the amount of trafficking CMPs imposed on a firm may not exceed $40,000 during a 2-year period.

Section 1743 of Public Law No. 101–624 also provides for the permanent disqualification of a firm for the sale of

firearms, ammunition, explosives, or controlled substances and gives the Secretary discretion to impose a CMP in lieu of permanent disqualification if the Secretary determines that there is substantial evidence that the firm had an effective policy and program in effect to prevent violations of the Act and program regulations. The criteria applied in such a case would be the current criteria set forth in § 278.6(i).

This rule, therefore, amends § 278.6 to incorporate the above statutory changes into the program regulations. In addition, this rule amends § 271.2 to include the sale of firearms, ammunition, explosives or controlled substances in the definition of "trafficking."

The proposed rule set out a revision to the definition of "manager" included in Criterion 4 of § 278.6(i) of the regulations. The intent was to make the definition of manager conform with the definition suggested by House and Senate conferees in the Conference Report (H.R. Rep. No. 101–916, 2d Sess. 1098 (1990)). Under the proposed definition (published at 56 FR 23484 on May 21,1991), a person would be considered a part of firm "management" if that individual performs substantial supervisory responsibilities, i.e., supervises the work of other employees and directs the activities and work assignments of store employees.

Several comments were received with regard to the definition of "manager" as it relates to eligibility of a firm for a trafficking civil money penalty. In general, the commenters felt that the Department did not comply with the Congressional intent to narrow the definition of "manager" in this context, and rather proposed a definition that would broaden the types of employees that could be considered to be part of firm management, thus making it more likely that a firm would be determined ineligible for a civil money penalty in lieu of permanent disqualification for trafficking.

In addition, there seemed to be confusion on the part of commenters between the general definition of "firm management" as stated in § 271.2 of the March 28, 1991 proposed rule entitled "Food Stamp Program: Retailer/Wholesaler Changes" (56 FR 12857–65) and the definition of manager as it relates to determining eligibility of a firm for a trafficking civil money penalty, as set forth in the regulations at § 278.6(i). The purpose of the definition of "Firm management" included in § 271.2 is to establish in general the responsibility of store management personnel for compliance with Food Stamp Program rules and regulations. This definition of "Firm management" does not apply to § 278.6(i) of this rulemaking which defines "manager" exclusively for the purpose of determining eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.

In response to the comments submitted, the Department has again revised the definition of manager for purposes of determining eligibility of a firm for a civil money penalty in lieu of permanent disqualification for trafficking. The pertinent part of § 278.6(i), Criterion 4 has been revised in this final rule to state: "For purposes of this section, a person is considered to be part of firm management if that individual has substantial supervisory responsibilities with regard to directing the activities and work assignments of store employees. Such supervisory responsibilities shall include the authority to hire employees for the store or to terminate the employment of individuals working for the store."

The Department believes that this revision adequately addresses concerns of the commenters and reflects the intent of Congress with regard to various levels of supervisory responsibility that exist within firm management structures in the food trade industry.

Other Technical Changes

Some technical changes have also been incorporated into the final rule to correct several oversights in the drafting of the proposal. The first entails an amendment to § 278.6(b) to ensure that any firm considered for a fine as specified under § 278.6(l) or § 278.6(m) shall have full opportunity to submit information in response to a charge letter sent by FNS which describes the basis for the administrative action taken by the Agency.

A second group of minor technical changes has been made to Part 279—Administrative and Judicial Review—Food Retailers and Wholesalers. These amendments have been made to ensure that retailers and wholesalers that are assessed a fine under § 278.6(1) or 278.6(m) are able to take advantage of their right to administrative and judicial review.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food Stamps, Grant programs—social programs.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries, General line—wholesalers, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries—retail, Groceries, General line—wholesaler.

Accordingly, 7 CFR parts 271, 278 and 279 are amended as follows:

1. The authority citation for parts 271, 278, and 279 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:

a. A definition for the term "Access device" is added in alphabetical order; and

b. The definitions of "Coupon" and "Trafficking" are revised.

The addition and revisions read as follows:

§ 271.2 Definitions.

Access Device means any card, plate, code, account number, or other means of access that can be used alone, or in conjunction with another access device, to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds under the Food Stamp Act of 1977, as amended.

* * * * *

Coupon means any coupon, stamp, access device or type of certification provided pursuant to the provisions of this subchapter for the purchase of eligible food.

* * * * *

Trafficking means the buying or selling of coupons, ATP cards or other benefit instruments for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as the term is defined in section 802 of title 21, United States Code, for coupons.

* * * * *

3. In § 271.5, paragraph (b) is revised to read as follows:

§ 271.5 Coupons as obligations of the United States, crimes and offenses.

* * * * *

(b) *Penalties.* Any unauthorized issuance, redemption, use, transfer, acquisition, alteration, or possession of coupons, ATP cards, or other program access device may subject an individual, partnership, corporation, or other legal entity to prosecution under sections 15 (b) and (c) of the Food Stamp Act or under any other applicable Federal,

State or local law, regulation or ordinance.

(1) Section 15(b)(1) of the Food Stamp Act reads as follows:

Subject to the provisions of paragraph (2) of this subsection, whoever knowingly uses, transfers, acquires, alters, or possesses coupons, authorization cards, or access devices in any manner contrary to this Act or the regulations issued pursuant to this Act shall, if such coupons, authorization cards, or access devices are of a value of $5000 or more, be guilty of a felony and shall be fined not more than $250,000 or imprisoned for not more than twenty years, or both, and shall, if such coupons or authorization cards are of a value of $100 or more but less than $5000 or if the item used, transferred, acquired, altered or possessed is an access device that has a value of $100 or more but less than $5000 be guilty of a felony and shall upon the first conviction thereof, be fined not more than $10,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than six months nor more than five years and may also be fined not more than $10,000 or, if such coupons or authorization cards are of a value of less than $100, or if the item used, transferred, acquired, altered, or possessed is an access device that has a value of less than $100, shall be guilty of a misdemeanor, and upon the first conviction thereof, shall be fined not more than $1000 or imprisoned for not more than one year or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1000. In addition to such penalties, any person convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

(2) Section 15(b)(2) of the Food Stamp Act reads as follows:

In the case of any individual convicted of an offense under paragraph (b)(1) of this section, the court may permit such individual to perform work approved by the court for the purpose of providing restitution for losses incurred by the United States and the State agency as a result of the offense for which such individual was convicted. If the court permits such individual to perform such work and such individual agrees thereto, the court shall withhold the imposition of the sentence on the condition that such individual perform the assigned work. Upon the successful completion of the assigned work the court may suspend such sentence.

(3) Section 15(c) of the Food Stamp Act reads as follows:

Whoever presents, or causes to be presented, coupons for payment or redemption of the value of $100 or more, knowing the same to have been received, transferred, or used in any manner in violation of the provisions of this Act or the regulations issued pursuant to this Act, shall be guilty of a felony and, upon the first conviction thereof, shall be fined not more than $20,000 or imprisoned for not more than five years, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not less than one year nor more than five years and may also be fined not more than $20,000 or if such coupons are of a value of less than $100, shall be guilty of a misdemeanor and, upon the first conviction thereof, shall be fined not more than $1,000 or imprisoned for not more than one year, or both, and upon the second and any subsequent conviction thereof, shall be imprisoned for not more than one year and may also be fined not more than $1,000. In addition to such penalties, any persons convicted of a felony or misdemeanor violation under this subsection may be suspended by the court from participation in the food stamp program for an additional period of up to eighteen months consecutive to that period of suspension mandated by section 6(b)(1) of this Act.

* * * * *

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

4. In § 278.1, the first sentence of paragraph (j)(2) is revised, the word "or" is removed from the end of paragraph (k)(1)(iii), paragraph (k)(1)(iv) is redesignated as paragraph (k)(1)(v), and a new paragraph (k)(1)(iv) is added. The revision and addition read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(j) *Denying authorization.* * * *

(2) The firm has failed to pay in full any fiscal claim assessed against the firm under § 278.7 or any fines assessed under § 278.6(l) or § 278.6(m). * * *

(k) *Withdrawing authorization.* (1) * * *

(iv) The firm has failed to pay fines assessed under § 278.6(l) or § 278.6(m); or

* * * * *

5. In § 278.6:

a. Paragraph (a) is amended by removing the words "in coupons or ATP cards" where they appear in the second sentence and replacing them with the words "as defined in § 271.2", and by revising the last sentence;

b. Paragraph (b)(1) is amended by revising the first three sentences;

c. Paragraph (b)(2)(i) is amended by removing the words "in food coupons, ATP cards or other benefit instruments" and replacing them with the words "as defined in § 271.2";

d. Paragraph (e)(1)(i) is amended by removing the words "in coupons or ATP cards" and replacing them with the words "as defined in § 271.2";

e. The introductory text of paragraph (i) is amended by removing the words "in food coupons, ATP cards or other program benefit instruments" in the first sentence and replacing them with the words "as defined in § 271.2", and by revising Criterion 4;

f. Paragraph (i)(2)(iii) is revised;

g. The introductory text of paragraph (j) is amended by revising the first sentence;

h. Paragraphs (l) and (m) are redesignated as (n) and (o) respectively, and new paragraphs (l) and (m) are added.

The addition and revisions read as follows:

§ 278.6 Disqualification of retail food stores and wholesale food concerns, and imposition of civil money penalties in lieu of disqualifications.

(a) *Authority to disqualify or subject to a civil money penalty.* * * * FNS may impose a civil money penalty of up to $20,000 for each violation in lieu of a permanent disqualification for trafficking, as defined in § 271.2, in accordance with the provisions of § 278.6(i) and § 278.6(j).

(b) *Charge letter*—(1) *General provisions.* Any firm considered for disqualification or imposition of a civil money penalty under paragraph (a) of this section or a fine as specified under paragraph (l) or (m) of this section shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter shall specify the violations or actions which FNS believes constitute a basis for disqualification or imposition of a civil money penalty or fine. * * *

* * * * *

(i) *Criteria for eligibility for a civil money penalty in lieu of permanent disqualification for trafficking.* * * *

Criterion 4. Neither firm ownership nor management were aware of, approved, benefitted from, or were in any way involved in the conduct or approval of trafficking violations. For purposes of this section, a person is considered to be part of firm management if that individual has substantial supervisory responsibilities with regard to directing the activities and work assignments of store employees. Such supervisory responsibilities shall include the authority to hire employees for the store or to terminate the employment of individuals working for the store.

* * * * *

(2) *Compliance training program standards.* * * *

(iii) Written materials, which may include FNS publications and program regulations that are available to all authorized firms, are used in the training program. Training materials shall clearly state that the following acts are prohibited and are in violation of the Food Stamp Act and regulations: the exchange of food coupons, ATP cards or other program access devices for cash; and, in exchange for coupons, the sale of firearms, ammunition, explosives or controlled substances, as the term is defined in section 802 of title 21, United States Code.

(j) *Amount of civil money penalty in lieu of permanent disqualification for trafficking.* A civil money penalty assessed in accordance with § 278.6(i) shall not exceed $20,000 for each violation, and shall not exceed $40,000 during a 2-year period. * * *

* * * * *

(l) *Fines for the acceptance of loose coupons.* FNS may impose a fine against any retail food store or wholesale food concern that accepts coupons that are not accompanied by the corresponding book cover, other than the denomination of coupons used for making change as specified in § 278.2(d) or coupons accepted from homeless meal providers as specified in § 278.2(c). The fine to be assessed against a firm found to be accepting loose coupons shall be $500 per investigation *plus* an amount equal to double the face value of each loose coupon accepted, and may be assessed and collected in addition to any fiscal claim established by FNS. The fine shall be paid in full within 30 days of the firm's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the store or concern to collect the fine. FNS may withdraw the authorization of the store, as well as other authorized locations of a multi-unit firm which are under the same ownership, for failure to pay such a fine as specified under § 278.1(k). FNS may deny the authorization of any firm that has failed to pay such fines as specified under § 278.1(j).

(m) *Fines for unauthorized third parties that accept food stamps.* FNS may impose a fine against any individual, sole proprietorship, partnership, corporation or other legal entity not approved by FNS to accept and redeem food coupons for any violation of the provisions of the Food Stamp Act or the program regulations, including violations involving the acceptance of coupons. The fine shall be $1,000 for each violation *plus* an amount equal to three times the face value of the illegally accepted food coupons. The fine shall be paid in full within 30 days of the individual's or legal entity's receipt of FNS' notification to pay the fine. The Attorney General of the United States may institute judicial action in any court of competent jurisdiction against the person to collect the fine. FNS may withdraw the authorization of any firm that is under the same ownership as an unauthorized firm that has failed to pay such a fine, as specified under § 278.1(k). FNS may deny authorization to any firm that has failed to pay such a fine, as specified under § 278.1(j).

* * * * *

6. In § 278.9, a new paragraph (i) is added to read as follows:

§ 278.9 Implementation of amendments relating to the participation of retail food stores, wholesale food concerns and insured financial institutions.

* * * * *

(i) *Amendment No. 334.* The program changes made to § 278.1 and § 278.6 by this amendment are effective February 1, 1992. The program changes made to § 271.2 and § 271.5 by this amendment are retroactively effective to November 28, 1990, as specified in Pub. L. No. 101-624.

PART 279—ADMINISTRATIVE AND JUDICIAL REVIEW—FOOD RETAILERS AND FOOD WHOLESALERS

§ 279.3 [Amended]

7. In § 279.3, paragraph (a)(2) is amended by adding the words "or imposition of a fine under § 278.6(l) or § 278.6(m);" to the end of the sentence.

§ 279.6 [Amended]

8. In § 279.6, paragraph (a) is amended by adding the words "or a fine" to the end of the paragraph.

§ 279.8 [Amended]

9. In § 279.8, paragraph (c) is amended by adding the words "or fine" after the words "civil money penalty" appear in the heading of the paragraph and after each of the three times the words "civil money penalty" appear in the first sentence.

10. In § 279.11, a new paragraph (c) is added to read as follows:

§ 279.11 Implementation of amendments relating to administrative and judicial review.

* * * * *

(c) *Amendment No. 334.* The program changes made to part 279 by this amendment are effective February 1, 1992.

Dated: January 28, 1992.

Phyllis R. Gault,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 92-2439 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Part 278

[Amt. No. 339]

Food Stamp Program: Authority To Require Retail Food Stores and Wholesale Food Concerns To Submit Taxpayer Identification Numbers

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Food Stamp Program regulations at 7 CFR part 278 to require participating retail food stores or wholesale food concerns to furnish to the Food and Nutrition Service (FNS) taxpayer identification numbers including (a) the employer identification number of the firm and (b) the social security numbers of certain owners. Confidentiality and nondisclosure safeguards of taxpayer identification numbers are included in this final rule. Compiling a data base of taxpayer identification numbers will help to ensure that only properly authorized firms participate in the program.

DATE: This action is effective February 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dwight Moritz, Coupon and Retailer Branch, Benefit Redemption Division, Food and Nutrition Service, Alexandria, Virginia, 22302, or telephone (703) 305-2418.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1512-1

The Department has reviewed this rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has classified it as "not major". The rule will affect the economy by less than $100 million a year. The rule is not likely to result in a major increase in costs or prices for consumers, industries, government agencies, or geographic regions. There will be no adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Although this rule will affect the business community, the effect will

be of a non-economic nature and is not expected to be significant.

Executive Order 12372

The Food Stamp Program is listed in the *Catalog of Federal Domestic Assistance* under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3015, subpart V (Cite 48 FR 29115, June 24, 1983 or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. No. 96–354). The Administrator of the Food and Nutrition Service has certified that this action does not have a significant economic impact on a substantial number of small entities. The rule simply provides for the collection of additional information to ensure that only properly authorized retail food stores and wholesale food concerns participate in the program.

Paperwork Reduction Act

This rule contains information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Form FNS–252, Food Stamp Program Application for Stores.

Description: In accordance with 7 CFR 278.1(a), the Department currently collects data from applicant retail food stores and wholesale food concerns using the Form FNS–252. The social security numbers and employer identification numbers will be collected as part of this data submission.

Description of Respondents: Retail food stores and wholesale food concerns.

Estimated Annual Reporting and Recordkeeping Burden:

Total Existing Burden Hours—18,679.

Total Increased Burden Hours—23,904.

Total Difference—5,225.

As required by section 3504(h) of the Paperwork Reduction Act of 1980, FNS submitted a copy of the proposed rule to OMB for its review of these information collection requirements. In the proposed rule, organizations and individuals were asked to submit comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, to the Coupon and Retailer Branch, Benefit Redemption Division, (address above) and to the Office of Information and Regulatory Affairs, OMB, room 3208, New Executive Office Building, Washington, DC 20503, Attn: Laura Oliven, Desk Officer for FNS. No public comments regarding the burden estimate were received and the burden hour increase was approved by OMB. The OMB control number assigned to the reporting and recordkeeping requirements of Form FNS–252 is OMB No. 0584–0008.

Background

Section 1735 of Public Law No. 101–624, 104 Stat. 3359, the Food, Agriculture, Conservation and Trade Act of 1990, amended the Social Security Act and the Internal Revenue Code of 1986 to provide FNS statutory authority to require retail food stores and wholesale food concerns to furnish the following taxpayer identification numbers: The social security account numbers (SSNs) of the owners of these firms and the firm's employer identification number (EIN). This rule amends the Food Stamp Program regulations to require the collection of these numbers, specify what use may be made of them, and reference the penalties for unauthorized disclosure and solicitation. A proposed rule dealing with these requirements was published at 56 FR 40580 on August 15, 1991 and provided the public with a 30-day period to submit comments on the proposed provisions. A total of four comments were received regarding the proposed rule. The major concerns raised by the commenters are discussed below.

In accordance with section 1735, the Department will collect the EIN of each applicant or participating retail food store or wholesale food concern if one has been assigned by the Internal Revenue Service. The guidelines for requesting EINs reflect the provisions of Treasury Regulation § 301.6109–2 (26 CFR 301.6109–2). In addition, the Department will collect SSNs of sole proprietors and of partners in firms which are partnerships. If a partnership has both general and limited partners, SSNs are required only for the general partners. Further, the Department will collect SSNs of the owners of privately owned corporations. Privately owned corporations are those in which the shares or stock are not available for purchase by the general public. In these instances, the Department will collect the SSNs of up to five corporate owners. If there are five or fewer owners, SSNs of all must be provided. If there are more than five owners, SSNs of only the five largest shareholders (owners) are required. Privately owned corporations must also submit their EINs, along with owner SSNs, where applicable.

One commentor indicated that the Department should require SSNs only if identifying information cannot be obtained from alternative sources, and when the need for this information outweighs the risk of exposing an individual owner's SSN. The Department recognizes that confidentiality of SSNs is of great concern to individuals and has explored the possibility of alternative sources of information that would serve the same identifying purpose as SSNs. The Department found that no other source would consistently or accurately meet the Department's needs.

As noted below, section 1735 severely limits the access to the SSNs and EINs and establishes strict safeguards and severe penalties for unauthorized use and disclosure of these numbers. The Department will adhere to the access limits and safeguards and will strictly enforce these penalty provisions. Furthermore, access to the data base in which these numbers will be stored meets stringent computer security standards designed to safeguard unauthorized access to the numbers. Therefore, the proposed rulemaking concerning which taxpayer identification numbers must be submitted has been adopted without change in this final rule.

One commentor concurred with the intent and the language of the rule as written regarding the usage of SSNs and EINs. Compiling SSN and EIN data bases will help ensure that only properly authorized firms participate in the program. The Department will be able to compare the SSN of a person applying for authorization, as well as the EIN of the applicant firm, against SSNs and EINs of firms in a national data base to prevent disqualified firms from being reauthorized before the disqualification period expires. The Department will also be able to identify a firm which has been previously sanctioned for program violations. Such a firm is given more severe sanctions; e.g., violations that would warrant a 1-year disqualification for a first offender would result in a 2-year disqualification for a second

offense and permanent disqualification for a third offense (7 CFR 278.6(e)).

In accordance with the language of section 1735, SSN and EIN information will be available only to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of the Food Stamp Act. Further, no officer or employee of the Department of Agriculture shall have access to these numbers for any purpose other than the establishment and maintenance of a list of the names, SSNs and EINs in order to determine which applicants have been previously sanctioned, or convicted, under section 12 or 15 of the Act (7 U.S.C. 2021, 2024). The Department may use this information on sanctions and convictions in administering sections 9 and 12 of the Act (7 U.S.C. 2018, 2021). Three commentors provided comments on this portion of the proposed rulemaking.

One commentor suggested that in §§ 278.1 (q)(1)(iv) and (q)(2)(iv) the proposed wording "* * * for the purposes of this section * * *" be changed to "* * * for the purposes of § 278.1 (q)(1)(iv) * * *" and "* * * for the purposes of § 278.1(q)(2)(iv) * * *." The commentor believed that this would eliminate any possibility that former officers or employees would have access to SSNs and EINs. The Department agrees with this commentor and has revised the final rulemaking to incorporate this change.

Two other commentors addressed the issue of access to SSNs and EINs. One of these commentors asked that the Department establish strict rules to limit the chances for disclosure of SSNs since owners of multiple outlet stores are particularly subject to the risk of disclosure by processing clerks in both the private and public sector. The commentor further suggested that owners of multiple outlet stores submit the required SSNs only to a central processing office. The Department recognizes the legitimate concern of this commentor that privacy safeguards be established to prevent unauthorized disclosure of SSNs. However, to participate, all food stores must meet legislatively mandated eligibility criteria and be authorized and monitored on an individual site basis. Strong safeguards have been established by section 1735 and related legislation cited therein, and penalty provisions will be strictly enforced to protect against unauthorized use or disclosure of SSNs. Therefore, the Department has made no change in this regard in the final rule.

The second commentor strongly endorsed the safeguards contained within the proposed regulations to protect the privacy of retailers and wholesalers. Access to this information is to be *only* for the purpose of establishing and maintaining a list of names, and EINs of the retail food stores and wholesale food concerns for use in determining those applicants who have previously been sanctioned or convicted under the Food Stamp Act. Therefore, the commentor recommended that §§ 278.1(q)(1)(ii) and (q)(2)(ii) be clarified and amended so that "*only* officers and employees whose duties or responsibilities require access" be permitted access. The Department believes that this suggestion clarifies the intent of the law. Therefore, the final rulemaking reflects this commentor's suggestion.

Finally, this rule references the sanctions mandated by section 1735 for the willful and unauthorized disclosure of these numbers of receipt of these numbers due to willful solicitation. The sanctions mandated by section 1735 are those imposed by sections 7213 (a)(1), (2), (3) and (4) of the Internal Revenue Code (26 U.S.C. 7213). One commentor wrote to express strong support of the proposed penalty regulations and to urge the Department to strictly enforce the penalty provisions against employees who violate the confidentiality requirements of the law by unauthorized or willful disclosures.

The Department coordinated this rulemaking with both the Internal Revenue Service (Department of the Treasury) and the Department of Health and Human Services, in accordance with the provisions in section 1735.

List of Subjects in 7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries—retail, Groceries—general line and wholesaler, Penalties.

Accordingly, 7 CFR part 278 is amended as follows:

1. Authority citation for part 278 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

2. In § 278.1:

a. Paragraph (b) is amended by redesignating paragraph (b)(5) as paragraph (b)(6), and by adding a new paragraph (b)(5);

b. Paragraph (q) is amended by:

1. Adding the words "Except for employer identification numbers (EINs) and social security numbers (SSNs)," to the beginning of the first sentence.

2. Adding two sentences to the end of the paragraph.

3. Adding new paragraphs (q)(1) and (q)(2).

The additions read as follows:

§ 278.1 Approval of retail food stores and wholesale food concerns.

* * * * *

(b) *Determination of Authorization.*

* * *

(5) *Taxpayer identification numbers.* At the time of an initial request for authorization as well as reauthorization, an applicant firm must provide its employer identification number and social security numbers as described below:

(i) *Employer Identification Number.* The firm must provide its employer identification number (EIN) if one has been assigned to the firm by the Internal Revenue Service. The authority to request EINs and the guidelines for requesting EINs are set forth in section 6109(f) of the Internal Revenue Code of 1986 and Treas. Reg. § 301.6109–2 (26 CFR 301.6109–2).

(ii) *Social Security Number.* In addition to the EIN, the firm must provide the social security numbers (SSNs) of the following individuals:

(A) The SSN of an owner of a sole proprietorship.

(B) The SSNs of general partners of firms which are partnerships.

(C) The SSNs of up to five of the largest shareholders (owners) of privately owned corporations. (For purposes of this section, a privately owned corporation is one which has shares or stock that are not traded on a stock exchange or available for purchase by the general public.)

* * * * *

(q) *Safeguarding privacy.* * * * For safeguards with respect to EINs, see § 278.1(q)(1) below. For safeguards with respect to SSNs, see § 278.1(q)(2) below.

(1) *Employer identification numbers.* (i) The Department may have access to the EINs obtained pursuant to § 278.1(b)(5) only for the purpose of establishing and maintaining a list of the names and EINs of the stores and concerns for use in determining those applicants who previously have been sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977 (7 U.S.C. 2021 or 2024). The Department may use this determination of sanctions

or convictions in administering sections 9 and 12 of the Food Stamp Act of 1977 (7 U.S.C. 2018, 2021). See Treas. Reg. § 301.6109–2(b) (26 CFR 301.6109–2(b)).

(ii) The only persons permitted access to the EINs obtained pursuant to § 278.1(b)(5) are officers and employees of the United States whose duties or responsibilities require access to the EINs for the administration or enforcement of the Food Stamp Act of 1977. See Treas. Reg. § 301.6109–2(c)(1) (26 CFR 301.6109–2(c)(1)).

(iii) The Department shall provide for any additional safeguards that the Secretary of the Treasury determines to be necessary or appropriate to protect the confidentiality of the EINs. The Department may also provide for any additional safeguards to protect the confidentiality of EINs so long as these safeguards are consistent with any safeguards determined by the Secretary of the Treasury to be necessary or appropriate. See Treas. Reg. § 301.6109–2(c)(2) (26 CFR 301.6109–2(c)(2)).

(iv) EINs maintained by the Department pursuant to § 278.1(b)(5) are confidential. Except as provided in § 278.1(s)(1)(ii) above, no officer or employee of the United States who has or had access to any such EIN may disclose that number in any manner. For purposes of § 278.1(q)(1)(iv) the term *officer or employee* includes a former officer or employee. See Treas. Reg. § 301.6109–2(d) (26 CFR 301.6109(d)).

(v) Sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 apply with respect to the unauthorized, willful disclosure to any person of EINs obtained by the Department pursuant to § 278.1(b)(5) in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosure of returns and return information described in those sections. Section 7213(a)(4) of the Internal Revenue Code of 1986 applies with respect to the willful offer of any item of material value in exchange for any EIN obtained by the Department pursuant to § 278.1(b)(5) in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section. See Treas. Reg. § 301.6109–2(e) (26 CFR 301.6109–2(e)).

(2) *Social Security Numbers.* (i) The Department may have access to SSNs obtained pursuant to § 278.1(b)(5) only for the purpose of establishing and maintaining a list of the names and SSNs for use in determining those applicants who previously have been sanctioned or convicted under section 12 or 15 of the Food Stamp Act of 1977 (7 U.S.C. 2021 or 2024). The Department may use this determination of sanctions and convictions in administering sections 9 and 12 of the Food Stamp Act of 1977 (7 U.S.C. 2018, 2021).

(ii) The only persons permitted access to the SSNs obtained pursuant to § 278.1(b)(5) are officers and employees of the United States whose duties or responsibilities require access to the SSNs for the administration or enforcement of the Food Stamp Act of 1977.

(iii) The Department shall provide for all additional safeguards that the Secretary of Health and Human Services determines to be necessary or appropriate to protect the confidentiality of the SSNs. The Department may also provide for any additional safeguards to protect the confidentiality of SSNs so long as these safeguards are consistent with any safeguards determined by the Secretary of Health and Human Services to be necessary or appropriate.

(iv) The SSNs and related records that are obtained or maintained by authorized persons are confidential, and no officer or employee shall disclose any such SSN or related record except as authorized. The term "related record" means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a request for a SSN is maintained. For purposes of § 278.1(q)(2)(iv) the term "officer or employee" includes a former officer or employee.

(v) The sanctions under sections 7213(a) (1), (2) and (3) of the Internal Revenue Code of 1986 will apply with respect to the unauthorized, willful disclosure to any person of SSNs and related records obtained or maintained in the same manner and to the same extent as sections 7213(a) (1), (2) and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections. The sanction under section 7213(a)(4) of the Internal Revenue Code of 1986 will apply with respect to the willful offer of any item of material value in exchange for any SSN or related record in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

* * * * *

Dated: January 28, 1992.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 92–2424 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 731]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from January 31 through February 6, 1992. Consistent with program objectives, such action is needed to establish and maintain orderly marketing conditions for fresh California-Arizona navel oranges for the specified week. Regulation was recommended by the Navel Orange Administrative Committee (Committee), which is responsible for local administration of the navel orange marketing order.

EFFECTIVE DATE: Regulation 731, § 907.1031, is effective for the period from January 31 through February 6, 1992.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities.

The California-Arizona navel orange industry is characterized by a large number of growers located over a wide area. The production area is divided into four districts which span Arizona and part of California. The largest proportion of navel orange production is located in District 1, Central California, which represented about 79 percent of the total production in 1990–91. District 2 is located in the southern coastal area of California and represented almost 18 percent of 1990–91 production; District 3 is the desert area of California and Arizona, and it represented slightly less than 3 percent; and District 4, which represented slightly less than 1 percent, is northern California. The Committee's revised estimate of 1991–92 production is 64,600 cars (one car equals 1,000 cartons at 37.5 pounds net weight each), as compared with 32,895 cars during the 1990–91 season.

The three basic outlets for California-Arizona navel oranges are the domestic fresh, export, and processing markets. The domestic fresh (regulated) market is a preferred market for California-Arizona navel oranges while the export market continues to grow. The Committee has estimated that about 68 percent of the 1991–92 crop of 64,600 cars will be utilized in fresh domestic channels (43,650 cars), with the remainder being exported fresh (14 percent), processed (16 percent), or designated for other uses (2 percent). This compares with the 1990–91 total of 16,675 cars shipped to fresh domestic markets, about 51 percent of that year's crop. In comparison to other seasons, 1990–91 production was low because of a devastating freeze that occurred during December 1990.

Volume regulations issued under the authority of the Act and Marketing Order No. 907 are intended to provide benefits to producers. Producers benefit from increased returns and improved market conditions. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of oranges in the market throughout the marketing season.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the navel orange marketing order are required by the Committee from handlers of navel oranges. However, handlers in turn may require individual producers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

Major reasons for the use of volume regulations under this marketing order are to foster market stability and enhance producer revenue. Prices for navel oranges tend to be relatively inelastic at the producer level. Thus, even a small variation in shipments can have a great impact on prices and producer revenue. Under these circumstances, strong arguments can be advanced as to the benefits of regulation to producers, particularly smaller producers.

The Committee adopted its marketing policy for the 1991–92 season on June 25, 1991. The Committee reviewed its marketing policy at district meetings as follows: Districts 1 and 4 on September 24, 1991, in Visalia, California; and Districts 2 and 3 on October 1, 1991, in Ontario, California. The Committee subsequently revised its marketing policy at a meeting on October 15, 1991. The marketing policy discussed, among other things, the potential use of volume and size regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Mr. Nissen. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on January 28, 1992, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with 7 members voting in favor, 3 opposing, and 1 abstaining, that 1,700,000 cartons is the quantity of navel oranges deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions and weather and transportation conditions.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1991–92 marketing policy. The recommended amount of 1,700,000 cartons is equivalent to the amount specified in the Committee's shipping schedule. Of the 1,700,000 cartons, 83.6 percent or 1,421,200 cartons are allotted for District 1, and 16.4 percent or 278,800 cartons are allotted for District 2. Districts 3 and 4 are not regulated since approximately 78 percent of District 3's crop and 92 percent of District 4's crop to date have been utilized, and handlers would not be able to utilize their allotments.

During the week ending on January 23, 1992, shipments of navel oranges to fresh domestic markets, including Canada, totaled 1,647,000 cartons compared with 470,000 cartons shipped during the week ending on January 24, 1991. Export shipments totaled 373,000 cartons compared with 89,000 cartons shipped during the week ending on January 24, 1991. Processing and other uses accounted for 454,000 cartons compared with 1,920,000 cartons shipped during the week ending on January 24, 1991.

Fresh domestic shipments to date this season total 13,944,000 cartons compared with 14,504,000 cartons shipped by this time last season. Export shipments total 2,322,000 cartons compared with 1,937,000 cartons shipped by this time last season. Processing and other use shipments total 2,981,000 cartons compared with 6,035,000 cartons shipped by this time last season.

For the week ending January 23, 1992, regulated shipments of navel oranges to the fresh domestic market were 1,565,000 cartons on an adjusted

allotment of 1,473,000 cartons which resulted in net overshipments of 92,000 cartons. Regulated general maturity shipments for the current week (January 24 through January 30, 1992) are estimated at 1,640,000 cartons on an adjusted allotment of 1,642,000 cartons. Thus, undershipments of 2,000 cartons could be carried forward into the week ending on February 6, 1992.

The average f.o.b. shipping point price for the week ending on January 16, 1992, was $9.40 per carton based on a reported sales volume of 1,355,000 cartons. The season average f.o.b. shipping point price to date is $10.03 per carton. The average f.o.b. shipping point price for the week ending on January 24, 1991, was $15.92 per carton; the season average f.o.b. shipping point price at this time last year was $10.30.

The Department's Market News Service reported that, as of January 28, demand for California-Arizona navel oranges is fairly light, and the market is about steady.

Committee members discussed implementing volume regulation at this time, as well as different levels of allotment. Three Committee members favored open movement at this time, while the majority of Committee members favored the issuance of general maturity allotment for Districts 1 and 2.

According to the National Agricultural Statistics Service, the 1990–91 season average fresh equivalent on-tree price for California-Arizona navel oranges was $7.75 per carton, 119 percent of the season average parity equivalent price of $6.52 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1991–92 season average fresh on-tree price is estimated at $6.33 per carton, about 85 percent of the estimated fresh on-tree parity equivalent price of $7.44 per carton.

Limiting the quantity of navel oranges that may be shipped during the period from January 31 through February 6, 1992, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the 1991–92 season was published in the September 30, 1991, issue of the **Federal Register** (56 FR 49432). The Department is currently in the process of analyzing comments received in response to this proposal and, if warranted, may finalize that action this season. However, issuance of this final rule implementing volume regulation for the regulatory week ending on February 6, 1992, does not constitute a final decision on that proposal.

Pursuant to 5 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until January 29, 1992, and this action needs to be effective for the regulatory week which begins on January 31, 1992. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 907.1031 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1031 Navel orange regulation 731.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from January 31 through February 6, 1992, is established as follows:

(a) District 1: 1,421,200 cartons;

(b) District 2: 278,800 cartons;

(c) District 3: unlimited cartons;

(d) District 4: unlimited cartons.

Dated: January 29, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–2666 Filed 1–31–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 916

[Docket No. FV–91–461IR]

Nectarines Grown in California; Temporary Relaxation of Size Requirements for Nectarines During the 1992 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule temporarily relaxes the minimum size requirements for fresh shipments of May Glo variety nectarines to size 108 from the current size 96 for the period April 15, 1992, through May 5, 1992, after which period the minimum size would revert back to size 96 for the remainder of the season. This rule also relaxes the minimum size requirements for April Glo variety nectarines to size 108 from the current applicable tighter requirements for the entire 1992 shipping season. Relaxation of the minimum size requirements as specified should result in more May Glo and April Glo nectarines being shipped to the fresh market, and increased returns to California nectarine growers.

DATES: This interim final rule becomes effective April 15, 1992. Comments which are received by March 4, 1992 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number ofthis issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing

Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5331.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 916 (7 CFR part 916) regulating the handling of nectarines grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 245 California nectarine handlers subject to regulation under the marketing order covering nectarines grown in California, and about 740 producers of nectarines in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of these handlers and producers may be classified as small entities.

Fresh California nectarine shipments are currently regulated by grade, maturity, and size under Nectarine Regulation 14 (7 CFR 916.356, as amended at 56 FR 22106, May 14, 1991, and 56 FR 40220, August 14, 1991). These regulations have been issued on a continuing basis subject to amendment, modification, or suspension as may be recommended by the Nectarine Administrative Committee (committee) and approved by the Secretary. The committee met on December 4, 1991, and unanimously recommended that the minimum size requirements for May Glo and April Glo variety nectarines be temporarily relaxed during 1992 season.

The interim final rule relaxes the minimum size requirements for the May Glo variety nectarines to size 108 from size 96 for the period April 15 through May 5, 1992, by amending paragraphs (a)(2) and (a)(3) of § 916.356. Paragraph (a)(3) provides that no handler shall ship any package or container of May Glo variety nectarines unless the nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 nectarines in the lug box, and unless such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines. Such nectarines are referred to size 96 fruit. Paragraph (a)(2) provides, for certain other specified varieties, that no handler shall ship any package or container of such nectarines unless the nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box, and unless such nectarines, when packed in any other container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines. Such nectarines are referred to as size 108 fruit.

The interim final fule also relaxes for the entire 1992 shipping season the minimum size requirements specified for April Glo variety nectarines specified in paragraphs (a)(6), (a)(7), and (a)(8) of § 916.356, by exempting that variety from such requirements and by adding a new paragraph (a)(9) specifying that April Glo variety nectarines must be at least size 108. Such nectarines are of a size that, when packed in molded forms (tray pack) in a No. 22D standard lug box, will pack, in accordance with the requirements of standard pack not more than 108 nectarines in a lug box; or are of a size that, in any other container, a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines. In the absence of these changes, April Glo nectarines would have had to meet the more restrictive size requirements specified in paragraphs (a)(6), (a)(7), and (a)(8) of § 916.356.

The minimum size requirements established for California nectarines recognize that larger sized nectarines provide greater consumer satisfaction than those of smaller sizes. Different minimum size requirements have been issued for the various nectarine varieties, reflecting both seasonal and varietal influences which affect average fruit sizes. Small minimum sizes generally have been established for earlier maturing varieties, while later maturing varieties, since they tend to attain a larger size at maturity, have been required to meet larger minimum sizes.

The desert area of the Coachella Valley is the growing area in California with the earliest nectarine harvests. Fruit grown in this area generally does not size as well as fruit grown in other areas of the State, due the onset of very hot weather early in season which retards further fruit growth and results in a relatively short growing season. In general, fruit grown in the Coachella Valley is smaller in size than fruit grown in other parts of the State. Nectarines have been grown commercially in the Coachella Valley for about six years.

Most May Glo and April Glo variety nectarines in California are grown in the Coachella Valley where they mature very early in the season at relatively small sizes compared with most other nectarines varieties grown in the State.

The May Glo and April Glo 1992 harvest season is expected to begin about mid-April in the Coachella Valley, and continue for about three weeks, depending on temperatures during the harvest period. May Glo nectarines from other parts of the State will continue to be shipped for several more weeks and are expected to reach the size 96 level. The size relaxations for May Glo and April Glo nectarines is for the 1992 season only to permit further evaluation of the sizing characteristics of these varieties in the Coachella Valley and other areas of the State.

It is the Department's view that this action will provide handlers and growers additional opportunities for marketing the 1992 season May Glo and April Glo nectarine crops.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the commitee, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and

contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) It would be beneficial to nectarine growers and handlers to be apprised of this action as soon as possible; (2) this action temporarily relaxes requirements for May Glo and April Glo variety nectarines; (3) California nectarine handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed requirements; and (4) the rule provides a 30-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects In 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 916.356 is amended by revising the introductory text of paragraphs (a)(2), (a)(3), (a)(6), (a)(7), and (a)(8) and by adding a new paragraph (a)(9) to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 916.356 Nectarine Regulation 14.

(a) * * *

(2) Any package or container of May Glo variety nectarines through May 5, 1992, or Aurelio Grand, Maybelle, Mayfire, or Royal Delight variety nectarines, unless:

* * * * *

(3) Any package or container of May Glo variety nectarines on or after May 6, 1992, or Early Diamond, or Mayfair variety nectarines, unless:

* * * * *

(6) During the period April 15 through May 31 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4), or (5) of this section, except for April Glo variety nectarines, unless:

* * * * *

(7) During the period June 1 through June 30 of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4), or (5) of this section, except for April Glo variety nectarines, unless:

* * * * *

(8) During the period July 1 through October 31, of each fiscal period, no handler shall handle any package or container of any variety of nectarines not specifically named in paragraphs (a)(2), (3), (4), or (5) of this section, except for April Glo variety nectarines, unless:

* * * * * *

(9) During the 1992 shipping season, any package or container of April Glo variety nectarines, unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box, are a size that will pack, in accordance with standard pack, not more than 108 nectarines in the lug box; or

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 92 nectarines.

* * * * *

Dated: January 29, 1992.

Charles R. Brader,

Director, Fruit and Vegetable Division.

[FR Doc. 92–2496 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1007

[DA–92–04]

Milk in the Georgia Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action relaxes the limits on diversion of milk by cooperative associations and proprietary handlers for the months of January 1992 through August 1992 in the Georgia milk order. The suspension increases the amount of milk that may be shipped directly from the farm to nonpool plants and still be priced under the order. The suspension was requested by Carolina Virginia Milk Producers Association (CVMPA), a cooperative association that represents producers who supply the market. The suspension is necessary because of changed marketing conditions and to facilitate the continued pricing of milk from producers who have historically been associated with the market.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued December 27, 1991; published January 3, 1992 (57 FR 220).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who supply milk for the area will have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Georgia marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on January 3, 1992 (57 FR 220) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. One comment in support and one in opposition were received.

After consideration of all relevant material, including the proposal in the notice, the comments received; and other available information, it is hereby found and determined that for the months of January 1992 through August 1992 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1007.13 paragraphs (b)(4) and (b)(5).

Statement of Consideration

This action relaxes the limits on diversion of milk by cooperative associations and proprietary handlers under the Georgia milk order for the months of January 1992 through August 1992. The suspension allows more milk to be shipped directly from farms to nonpool plants and still be priced under the order.

The order provides that a cooperative association may divert up to 25 percent of the milk received at pool plants and

that a proprietary handler may divert up to 25 percent of its nonmember milk received at its pool plant. The suspension increases the diversion allowance to all but 10 days' production of each producer during the month.

The suspension was requested by Carolina Virginia Milk Producers Association (CVMPA), a cooperative association having a substantial amount of milk pooled on the Georgia market. In support of its proposal, the cooperative said the suspension is needed because a decreased volume of milk is needed by pool plants in the Georgia marketing area. CVMPA said that on December 1, 1991, there was a significant shift of processed milk accounts from plants regulated by the Georgia milk order to other order plants. The cooperative also stated that it is not practical to shift producer milk supplies among orders until July or August because of the base plans in the Georgia order and neighboring orders.

Dairymen, Inc. (DI), stated in their opposition that essentially marketing conditions have not changed sufficiently to justify the suspension.

As indicated by CVMPA, there is a reduced need for producer milk at pool plants in the Georgia marketing area. The pounds of Class I utilization for December 1991 were approximately 49.6 million pounds as compared to 53.7 million pounds for December 1990 or a reduction of 7.5 percent. Without the suspension, CVMPA would have to inefficiently unload and reload milk at pool plants in order to keep it priced under the order. Alternatively the cooperative would not be able to pool the milk of producers historically associated with the market. No feasible alternative to suspension action exists until after the end of the base paying period under the orders in this region (July or August).

Accordingly, it is appropriate to suspend the diversion provisions of the Georgia milk order.

It is hereby found and determined that notice of proposed rulemaking, public procedure thereon, and thirty days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should obviate the need to inefficiently unload and reload milk at pool plants in order to keep it priced under the order.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment in support and one in opposition were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in the the **Federal Register.**

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

It is therefore order, That the following provisions of the order (7 CFR part 1007) are hereby suspended for the months of January 1992 through August 1992.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1007.13 [Suspended in Part]

2. In § 1007.13, paragraphs (b)(4) and (b)(5) are suspended from January 1, 1992, through August 31, 1992.

Signed at Washington, DC, on: January 28, 1992.

John E. Frydenlund

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–2351 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1413

1992 Wheat Program, Acreage Reduction and Loan Rates

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The 1992 acreage reduction program (ARP) percentage for wheat is 5 percent. On April 4, 1991, the Commodity Credit Corporation (CCC) issued a proposed rule with respect to the 1992 Production Adjustment Program for Wheat which is conducted by the CCC in accordance with the Agricultural Act of 1949 (1949 Act), as amended. This rule amends the regulations at 7 CFR part 1413 to set forth the acreage reduction percentage for the 1992 crop of wheat. This action is required by section 107B of the 1949 Act.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, room 3740–S, P.O. Box 2415, Washington, DC 20013 or call (202) 720–7923.

SUPPLEMENTARY INFORMATION: The Final Regulatory Impact Analysis describing the options considered in developing this rule and the impact of the implementation of each option is available on request from the above-named individual.

This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "major." It has been determined this program provision will result in an annual effect on the economy of $100 million or more.

The title and number of the Federal Assistance Program, as found in the catalog of Federal Domestic Assistance, to which this rule applies are:

Title	Number
Wheat Production Stabilization	10.058

It has been determined that the Regulatory Flexibility Act is applicable to this final rule because the CCC is required by Section 170B(o) of the 1949 Act to publish a notice of proposed rulemaking with respect to the subject matter of this rule. An Initial Regulatory Flexibility Analysis for the 1992 Wheat ARP was published along with the Preliminary Regulatory Impact Analysis of March 14, 1991. Copies of this analysis are available from the above-named individual.

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The amendments to 7 CFR part 1413 set forth in this final rule do not contain information collections that require clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

This final rule amends 7 CFR part 1413 to set forth the determination of the 1992 Production Adjustment Program for Wheat. General descriptions of the statutory basis for the determinations in

this notice were set forth at 56 FR 13787 (April 4, 1991). Comments received during the specified comment period are summarized as follows:

The public was asked to comment on three 1992 wheat ARP options of 5 percent, 10 percent, and 15 percent. Fifty-four comments were received. Nearly half (25) of the 54 respondents favored a 5-percent ARP. These respondents included most of the National and State wheat producer organizations, one general farm organization, many trade groups, and 3 of 17 producers. Slightly more than one-third (19) of the respondents including two general farm organizations and 11 of 17 producers favored a 15-percent ARP. About one-tenth (6) of the respondents favored no ARP although this was not one of the options listed. The remaining 4 respondents favored a 10-percent ARP.

Respondents favoring lower ARPs noted that the U.S. needs to produce to maintain international market share. They also cited the income impact of reduced payment acres under flexibility provisions and the impacts on the rural infrastructure of acres idled under the conservation reserve program and annual commodity programs. Respondents favoring higher ARPs noted that wheat prices would be higher and Government costs would be lower with higher ARP levels.

After considering these comments, the Secretary announced an ARP of 5 percent—the level favored by about half of all respondents and by a substantial majority of producer organizations and agribusinesses. The Secretary determined that a 5-percent ARP would be implemented for several reasons. A 5-percent ARP would maintain U.S. competitiveness in world markets while balancing the risks of excessive supplies and possible shortages.

A 5-percent ARP also reflects the tightened U.S. supply situation and further emphasizes the desire of the U.S. to reduce its reliance on ARPs. It signals to competitors that the U.S. will not idle large amounts of acreage in order to support the world price level for wheat and also signals to domestic and foreign customers that the U.S. will be a reliable supplier.

A 5-percent ARP was estimated to increase U.S. wheat supplies by about 100 million bushels over 1991 levels. The following table shows the estimated impacts of three different 1992 ARP options based on May, 1991 estimates, the month in which the 1992 ARP decision was made.

TABLE.—ESTIMATED IMPACTS OF 1992 ARP OPTIONS

Item	Option 1	Option 2	Option 3
ARP (percent)	0	5	10
Participation (percent)	88	84	82
Planted acres (mil. acr.)	75.5	72.3	69.3
Production (mil. bu.)	2,460	2,370	2,280
Domestic use (mil. bu.)	1,195	1,180	1,165
Exports (mil. bu.)	1,195	1,175	1,155
Ending stocks (mil. bu.)	757	702	647
Season average producer price ($/bu.)	2.81	2.90	2.99
Deficiency payments ($ mil.)	2,508	2,094	1,770

The announced ARP level of 5 percent is 10 percentage points below the statutory maximum of 15 percent. The 1949 Act provides that an ARP of not more than 0 to 15 percent may be implemented if the ending stocks-to-use (S/U) ratio for the previous marketing year is equal to or less than 40 percent. When the 1992 ARP was announced, the S/U for the 1991 marketing year was estimated to be 28.2 percent. Because the 1991 S/U level is below 34 percent, the minimum 6-percent ARP imposed by Section 1104 of the Agricultural Reconciliation Act of 1990 does not apply.

Acreage Reduction. In accordance with section 107B(f)(1)(D) of the 1949 Act, the ARP has been established with respect to the 1992 crop of wheat at 5 percent. Accordingly, producers will be required to reduce their 1992 acreage of wheat for harvest from the crop acreage base established for wheat for a farm by at least this established percentage in order to be eligible for wheat price support loans, purchase, and payments.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grain, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, 7 CFR part 1413 is amended to read as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54(a)(1) is revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(1)(i) 1991 wheat, 15 percent;

(ii) 1992 wheat, 5 percent;

* * * * *

Signed January 23, 1992, at Washington, DC.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–2355 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Part 1940

Implementation of Section 709 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Herein Referred to as the "Act")

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) adopts as final and amends its interim rule published February 20, 1991 (56 FR 6791). The intended effect is to provide guidance on the Rural Housing Targeting Set Aside (RHTSA) of sections 502, 504, 514, 515 and 524 housing funds in designated, underserved areas, make certain colonias located in the States of Texas, Arizona, New Mexico and California eligible for housing assistance and establish funding priority for colonias in certain circumstances.

EFFECTIVE DATE: March 4, 1992.

FOR FURTHER INFORMATION CONTACT: Joyce H. Akers, Senior Loan Specialist, Multi-Family Housing Processing Division, room 5347, telephone (202) 720–1608 or Robert Hall, Senior Loan Specialist, Single Family Housing Processing Division, room 5330, telephone (202) 720–1474. The address is: USDA–FmHA, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250–0700.

SUPPLEMENTARY INFORMATION: This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual

industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States enterprises to compete with foreign based enterprises in domestic or import markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–90, an Environmental Impact Statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.427 Rural Rental Assistance Payments

Intergovernmental Consultation

For the reasons set forth in the final rule, related notice(s) to 7 CFR part 3015, subpart V, 10.410 and 10.417 are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials. The remaining programs are subject to intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program.

Discussion of Comments Received

An interim rule was published in the **Federal Register** (56 FR 6791) on February 20, 1991, and invited comments for a 60 day period ending April 22, 1991. Four comments were received and considered.

One commenter pointed out potential problems involving (1) the short timeframe in which applicants were given to utilize the program funds in fiscal year (FY) 91 and (2) the impact of annually changing eligible counties where there is general underuse of rural housing programs by certain groups. In addressing the first concern, the enabling legislation was signed by the President on November 28, 1990, and provided 180 days for implementation. Recognizing the short time period mandated for implementation, FmHA quickly promulgated regulations in less than 90 days. While we recognize the timeframe for use of the program funds in FY 91 was short, we had no discretion in the matter. In addressing the second concern, the Act clearly indicates that counties may change from FY 91 to FY 92. The Act sets up three criteria by which to select targeted counties, i.e., poverty level, substandard housing and previous use of housing funds. The first two elements will not change since such data is not available from the 1990 census. The only variable would be the amount of housing assistance received in a particular county when FY 86 obligation data is dropped and FY 91 obligation data is added. A county, having received more, or less, housing assistance in FY 86 and/or FY 91 could become eligible or ineligible for targeted housing assistance in FY 92. The Act does not provide flexibility to keep counties targeted for certain groups. In addition, the Act aims to target funds to truly underserved counties. If the county does receive substantially more assistance than other counties, it should no longer be considered so that other, less served counties can receive priority.

One commenter stated it was unclear how multi-family housing applications would be handled when filed, but not funded, in one fiscal year and the county was not selected as underserved the following year. Should such a situation arise, the application would compete for non-targeted housing funds, based upon its priority point score in relation to other preapplications. Multi-family housing applicants would be notified, through issuance of Form AD–622, "Notification of Preapplication Review," that should RHTSA funds be unavailable, or the county in which the proposed rental housing would be located is no longer considered a targeted county, the AD–622 would no longer have priority for funding and the loan request would compete with other preapplications in non-targeted counties.

One commenter stated RHTSA program goals would be better served when the 1990 census data for poverty levels and substandard housing were available. Inasmuch as this data is not available from the 1990 census, this comment cannot be considered.

One commenter was concerned that the Rio Grande Valley counties in Texas, including Hidalgo, Cameron, Willacy and Starr were not on the list of eligible RHTSA counties and that eligible colonias in these counties would not qualify for program funds. Hildago, Cameron, Willacy and Starr met the eligibility criteria based on poverty level population and substandard housing units, but received program funds during the previous 5 fiscal years in excess of the level permitted for eligibility. However, eligible colonias in these counties qualify for funds as published in paragraph III of the interim rule, independent of being listed as a RHTSA county.

One commenter suggested that the level used to define "substantially lower" amount of program fund assistance received by a county during the previous 5 fiscal years be changed from 40 percent to 35 percent to permit some counties, with higher rates of substandard housing and poverty, to be eligible. We developed and analyzed data using a 35 percent level, and the results indicated that the targeted program would not be as manageable. Using the lower percentage would open up too many more counties competing for limited loan dollars. Continuing with the 40 percent level has the least impact on counties already selected and does not include more counties than could reasonably be expected to receive RHTSA funds. We appreciate this suggestion but are not implementing the suggested change.

In addition, it was noted that FmHA used different criteria in determining funding levels in the 100 counties eligible for sections 502, 504 and 515 housing programs during FY 91. In the section 504 program, funding levels were based on each county's pro rata share of the funds available while in the sections 502 and 515 programs, formula elements and weights contained in this subpart were applied to the 100 counties participating in RHTSA. Additionally, funds were made available based upon groupings of counties in the Section 515 program; whereas, county groupings were not a consideration in determining funding levels in the sections 502 and 504 programs. Each state's funding level was the greater of the formula allocation or an established minimum. In developing the final rule, a standardized methodology is used, making the sections 502, 504 and 515 programs more consistent. The methodology is based on the 100 eligible counties receiving a pro rata share of the funds available, with

minimum funding levels established. Using this methodology, the funds available more closely relate to the number of eligible counties within each state.

Because of changing funding levels and funding dates, all references to such have been removed from the Federal Register. In addition, the list of targeted counties has been removed and will be published annually by notice in the Federal Register.

List of Subjects in 7 CFR Part 1940

Accountability, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting requirements.

Therefore, chapter XVIII, title 7, Code of Federal Register is amended by adopting the interim rule published on February 20, 1991 (56 FR 6791), as a final rule with the following amendments:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Exhibit C to subpart L to part 1940 is revised to read as follows:

Exhibit C to Subpart L—Housing in Underserved Areas

I. Objective

A. To improve the quality of affordable housing by targeting funds under Rural Housing Targeting Set Aside (RHTSA) to designated areas that have extremely high concentrations of poverty and substandard housing and have severe, unmet rural housing needs.

B. To provide for the eligibility of certain colonias for rural housing funds.

II. Background

The Cranston-Gonzalez National Affordable Housing Act of 1990 (herein referred to as the "Act") requires that Farmers Home Administration (FmHA) set aside section 502, 504, 514, 515, and 524 funds for assistance in targeted, underserved areas. An appropriate amount of section 521 new construction rental assistance (RA) is set aside for use with seciton 514 and 515 loan programs. Under the Act, certain colonias are now eligible for FmHA housing assistance.

III. Colonias

A. Colonia is defined as any identifiable community that:

1. Is in the State of Arizona, California, New Mexico or Texas;

2. Is in the area of the United States within 150 miles of the border between the United States and Mexico, except that the term does not include any standard metropolitan statistical area that has a population exceeding 1 million;

3. Is designated by the State or county in which it is located as a colonia;

4. Is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and

5. Was in existence and generally recognized as a colonia before November 28, 1990.

B. Requests for housing assistance in colonias have priority as follows:

1. When the State did not obligate its allocation in one or more of its housing programs during the previous 2 fiscal years (FYs), priority will be given to requests for assistance, in the affected program(s), from regularly allocated funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

2. When the State did obligate its allocation in one or more of its housing programs during the previous 2 FYs, priority will be given to requests for assistance, in the affected program(s), from RHTSA funds, until an amount equal to 5 percent of the current FY program(s) allocation is obligated in colonias. This priority takes precedence over other processing priority methods.

C. Colonias may access pooled RHTSA funds as provided in paragraph IV G of this exhibit.

IV. RHTSA

A. *Amount of Set Aside.* Set asides for RHTSA, from the current FY allocations, are established in attachment 1 of this exhibit (available in any FmHA State Office).

B. *Selection of Targeted Counties.*—1. *Eligibility.* Eligible counties met the following criteria: (1) 20 percent or more of the county population is at, or below, poverty level; (2) 10 percent or more of the occupied housing units are substandard; and (3) the average funds received on a per capita basis in the county, during the previous 5 FYs, were more than 40 percent below the State per capita average during the same period. Data from the most recent available Census was used for all three criteria, with criteria (2) and (3) based on the FmHA rural area definition.

2. *Selection.* The Act requires that 100 of the most underserved counties be initially targeted for RHTSA funds. In establishing the 100 counties, those with 28 percent or more of their population at, or below, poverty level and 13 percent or more of their occupied housing units substandard, have preference. If less than 100 counties meet this criteria, the remaining counties meeting the criteria in paragraph IV B 1 of this exhibit will be ranked, based upon a total of their substandard housing and poverty level percentages. The highest-ranking counties are then selected until the list reaches 100. The remaining counties are eligible for pool funds only.

C. *State RHTSA Levels.* In the section 502, 504, and 515 programs, each State's RHTSA level will be based on its number of eligible counties, with each county receiving a pro rata share of the total funds available. In order to ensure that a meaningful amount of assistance is available to each State, minimum funding levels may be established. When minimum levels are established, they are set forth on Attachment 1 of this exhibit (available in any FmHA State Office).

D. *Use of Funds.* To maximize the assistance to targeted counties, allocated program funds should be used in addition to RHTSA funds, where possible. The State Director has the discretion to determine the most effective delivery of RHTSA funds among the targeted counties within his/her jurisdiction. The 100 counties listed in attachment 2 of this exhibit (available in any FmHA State Office) are eligible for RHTSA funding consideration immediately. Colonias are also eligible for RHTSA funds as described in paragraph III of this exhibit.

E. *National Office RHTSA Reserve.* A limited National Office reserve is available on an individual case basis when the State is unable to fund a request from its regular or RHTSA allocation. The amount of the reserve, and the date it can be accessed and any conditions thereof, if applicable, are contained in attachment 1 of this exhibit (available in any FmHA State Office).

F. *Requests for Funds and RA.* All RHTSA funds are reserved in the National Office and requests for these funds and/or RA units must be submitted by the State Director, using the applicable format shown on attachment 4 or 5 of this exhibit (available in any FmHA State Office). The State Director is responsible for notifying the Director of Single Family Housing Processing Division (SFHPD) or Multi-Family Housing Processing Division (MFHPD) of any RHTSA funds and RA units authorized, but not obligated, by RHTSA pooling date.

G. *Pooling.* Unused RHTSA funds and RA will be pooled. Pooling dates and any pertinent information thereof are available on attachment 1 of this exhibit (available in any FmHA State Office). Pooled funds will be available on a first-come, first-served basis to all eligible colonias and all counties listed on attachments 2 and 3 of this exhibit (available in any FmHA State Office). Pooled RHTSA funds will remain available until the year-end pooling date.

H. [Reserved]

I. [Reserved]

J. *Requests for Assistance.* Requests for assistance in targeted counties must meet all loan making requirements of the applicable program Instructions, except as modified for colonias in paragraph III of this exhibit. For section 515, States may:

1. Issue Form AD–622, "Notice of Preapplication Review Action," up to 150 percent of the amount shown in attachment 1 of this exhibit (available in any FmHA State Office).

2. All AD–622s issued for applicants in targeted counties will be annotated, in Item 7, under "Other Remarks," with the following: "Issuance of this AD–622 is contingent upon receiving funds from the Rural Housing Targeting Set Aside (RHTSA). Should RHTSA funds be unavailable, or the county

in which this project will be located is no longer considered a targeted county, this AD-622 will no longer be valid. In these cases, the request for assistance will need to compete with other preapplications in non-targeted counties, based upon its priority point score."

V. [Reserved]

3. Attachments 1, 2, and 3 to exhibit C are removed.

Dated: December 31, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-2560 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 245a

[INS No. 1432-91]

RIN 1115-AC13

One-Year Extension of Deadline for Filing Applications for Adjustment From Temporary to Permanent Residence for Legalized Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 245A of the Immigration and Nationality Act (INA), as amended by the Immigration Act of 1990 (IMMACT), by providing for a one-year extension of the deadline for processing of applicants for permanent residence under the Legalization Program and, as provided by IMMACT, amending the fee schedule to charge a late-filing fee of $40.00 in addition to the original $80.00 fee for filing Form I-698. This rule also provides for the sua sponte reopening and re-adjudicating without fee of those applications which were previously denied for late filing. In addition, this rule amends regulations providing for the issuance of an Order to Show Cause and Warrant of Arrest if the United States Attorney declines to prosecute a case involving fraud or willful misrepresentation or concealment of a material fact.

EFFECTIVE DATE: This final rule is effective February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jean M. Christiansen, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., room 7114, Washington, DC, 20536, telephone (202)514-3490.

SUPPLEMENTARY INFORMATION: On November 29, 1990, section 245A of the Immigration and Nationality Act was amended to provide for a one-year extension of the deadline for filing applications for adjustment from temporary to permanent resident status for legalized aliens. On July 8, 1991, the Service published an interim rule with request for comments in the **Federal Register** at 56 FR 31060-31061. The interim rule provided for the sua sponte reopening and re-adjudication of those applications which were denied for late filing. Related amendments were also made to 8 CFR 103.7(b)(1) to provide for a fee of $120.00 (filed with Form I-698, Application to Adjust Status from Temporary to Permanent Resident) from those who missed the original one-year filing deadline. The fee represents the cost for filing the original Form I-698 ($80.00) plus additional administrative costs incurred by the government in the administration of late applications ($40.00). Additionally, as throughout the Legalization Program, a "family cap" fee is provided. The maximum amount payable by a family (husband, wife and any minor children) is three hundred and sixty dollars ($360.00). The Service published an interim rule, with request for public comment, to allow Service Centers to accept, and consider timely filed, applications which were filed within forty-three months of approval for temporary residence.

The interim rule also amended 8 CFR 245a.1(e) by removing the provision for issuing an Order to Show Cause and Notice of Hearing (Form I-221) and Warrant for Arrest of Alien (Form I-200) if the United States Attorney declined to prosecute a case involving fraud or willful misrepresentation or concealment of a material fact, knowingly providing a false writing or document in making an application, knowingly making a false statement or representation, or engaging in any other activity prohibited by section 245A(c)(6) of the Act. This provision was also contained in 8 CFR 245a.2(t)(4), which was removed by an amendment which was published in the **Federal Register**, 53 FR 23382, on June 22, 1988. Not removing this provision in § 245a.1(e) at that time was an oversight.

The interim rule published on July 9, 1991, provided the public with a 30-day comment period which ended on August 8, 1991.

In response to the publication of the interim rule, the Service received fourteen comments. The discussion that follows summarizes the issues which have been raised relating to the interim rule and provides the Service's position on those issues. All of the comments were carefully reviewed and considered by the Service.

Eleven commenters expressed concerns related to the determination of the one-year extension of the deadline for filing applications for adjustment from temporary to permanent resident status for legalized aliens. Each of the eleven commenters stated that the additional twelve months would extend the filing period to forty two months, not forty three months as stated in the interim rule.

Section 245A(b)(1)(A) of the Immigration Reform and Control Act of 1986 (IRCA), clearly states, "The alien must apply for such adjustment during the one-year period beginning with the nineteenth month that begins after the date the alien was granted such temporary resident status." However, the statute is very clear concerning the provision for termination of temporary residence. Section 245A(b)(2)(C) of IRCA states that the Attorney General shall provide for termination of temporary resident status "at the end of the *thirty-first* month beginning after the date the alien is granted such status * * *" (Emphasis added).

The one-year extension, as provided by IMMACT, would extend the filing period to two years. As the language of the statute is clear that temporary resident status would not be terminated during this period, the decision was made that applications would be accepted until the end of the forty-third month. This decision was made based on Congressional intent that the Immigration Reform and Control Act of 1986 (IRCA) be a "liberal and generous" program.

Ten of the commenters also noted that 8 CFR 245a.3(e) should have been addressed in the interim rule by changing the reference to "30 months" from the date the application for temporary residence was approved and adjudicated on the basis of the existing record. This was an oversight by the Service and the final rule will amend 8 CFR 245a.3(e) by changing "30 months" to read: "43 months".

Three of the commenters expressed concern regarding the forty dollar late filing fee on applications filed on or after July 9, 1991, the date of publication of the interim rule in the **Federal Register**. The three commenters stated that the additional fee was excessive, and that the regulations did not explain how this fee was arrived at. The commenters also encouraged the INS to provide for outreach to those who missed their original deadline.

The forty dollar late filing fee was based on estimated additional administrative costs, which include, but are not limited to, mailers to each

eligible applicant who has not yet filed an application for adjustment from temporary to permanent residence; cost of changing the message on the 800 information number; revision of Form M-306; staff time for responding to status inquiries, re-opening and re-adjudicating denials, etc. It is the opinion of the Service that additional outreach is not necessary, as approximately 96% of those eligible to file have applied for adjustment to permanent residence. Of those who have failed to apply, it is estimated that approximately 6,000 have adjusted to permanent resident status by other means. The Service continues to accept some 500 applications weekly.

List of Subjects

8 CFR Part 103

Aliens, Delegation of authority (Government agencies), Fees.

8 CFR Part 245a

Administrative practice and procedures, Aliens.

Accordingly, under the authority of 5 U.S.C. 522, 522a; 8 U.S.C. 1101, 1103, 1201, 1255a, 1255a note, 1304; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; and 8 CFR part 2, the interim rule amending 8 CFR parts 103 and 245a, which was published in the **Federal Register** at 56 FR 31060–31061 on July 9, 1991, is adopted as a final rule with the following changes:

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99-603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100-204, SECTION 902

1. The authority citation for part 245a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

§ 245a.3 [Amended]

2. In § 245a.3, paragraph (e) is amended in the last sentence by revising the reference to "30 months" to read: "43 months".

Dated: January 17, 1992.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 92-2443 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket 91-178]

Validated Brucellosis-Free States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of swine by adding Hawaii and New Mexico to the list of validated brucellosis-free States. We determined that they meet the criteria for classification as validated brucellosis-free States. The action relieved certain restrictions on moving breeding swine from Hawaii and New Mexico.

EFFECTIVE DATE: March 4, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Delorias M. Lenard, Senior Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 736, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301)436-7767.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on September 10, 1991 (56 FR 46108-46109, Docket Number 91-114), we amended the brucellosis regulations in 9 CFR part 78 that prescribe conditions for the interstate movement of cattle, bison, and swine, by adding Hawaii and New Mexico to the list of validated brucellosis-free States in § 78.43.

Comments on the interim rule were required to be received on or before November 12, 1991. We did not received any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Swine herd owners in Hawaii and New Mexico are affected by this action, which allows breeding swine to be moved interstate from Hawaii and New Mexico without being tested for brucellosis. Approximately 200 swine are tested annually for brucellosis in Hawaii and New Mexico, at an average cost to the seller of $5.00 per test, in order to be eligible for interstate movement. Using these numbers, we estimate that removing the testing requirement will result in a potential annual savings of $1,000 for swine herd owners in Hawaii and New Mexico. Of the approximately 3,000 swine herd owners nationwide who regularly ship breeding swine interstate, approximately 6 regularly ship breeding swine interstate from Hawaii and only one from New Mexico. All of these herd owners would be considered small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.43 that was published at 56 FR 46108-46109 on September 10, 1991.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 29th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–2500 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–84–AD; Amendment 39–8173; AD 91–24–15]

Airworthiness Directives; Beech Models 1900 and 1900C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) 91–24–15, which was previously made effective by individual letter as to all known U.S. owners and operators of certain Beech Models 1900 and 1900C airplanes. The AD specified a modification to the instrument air plumbing to improve cold weather operation by draining accumulated moisture in the system. The Federal Aviation Administration (FAA) recently became aware of several reports of instrument air system failure on the affected airplanes because moisture accumulated in the instrument air system plumbing and froze. The actions specified by this AD are intended to prevent surface deice system failure, which could result in aerodynamic problems leading to loss of control of the airplane.

DATES: Effective March 2, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91–24–15, issued November 18, 1991, which contained this amendment. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 2, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; Telephone (316) 676–7111. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–84–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Vassalli, Aerospace Engineer, Systems and Equipment Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4132; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: On November 18, 1991, priority letter AD 91–24–15 was issued and made effective immediately as to all known U.S. owners and operators of Beech Models 1900 and 1900C airplanes. The AD required a modification to the instrument air plumbing in accordance with the instructions in Beech Service Bulletin (SB) No. 2428, dated October 1991, on certain Beech Models 1900 and 1900C airplanes that had not complied with Beech SB No. 2398, dated November 1991, or do not have the following installed: Kit Nos. 114–9038–1 S and 114–9038–3 S, or Kit Nos. 114–9038–5 S and 114–9038–7 S.

This AD was issued because of several reports of instrument air system failure on the affected airplanes. These airplanes are type certificated for flight into known icing conditions and use instrument air to operate the surface deice boot system. The surface deice boot system and air-driven instruments will still operate during loss of instrument air from one engine; however, loss of instrument air from both engines would shut down the surface deice boot system and air-driven instruments. It is possible that moisture could freeze and block both instrument air sources, thereby preventing the surface deice boot system from operating. In this situation, ice can form on the airplane in freezing conditions, which could cause aerodynamic problems leading to loss of control of the airplane.

The compliance time in this AD is presented in calendar time. The reasons for calendar time are (1) to assure that the modification is accomplished before the extreme cold weather since the unsafe condition would occur in freezing conditions; and (2) avoid inadvertent grounding of the affected airplanes because the usage rate varies throughout the fleet, i.e., one operator may utilize the airplane 25 hours time-in-service (TIS) in one week while another operator might not utilize the airplane 25 hours TIS is one month.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued to all known U.S. owners and operators of airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91-24-15 Beech: Amendment 39-8173; Docket No. 91-CE-84-AD.

Applicability: The model airplanes listed below, certificated in any category, that have not incorporated Beech Service Bulletin (SB) No. 2398, dated November 1991, or have not installed the following: Kit Nos. 114-9038-1 S and 114-9038-3 S, or Kit Nos. 114-9038-5 S and 114-9038-7 S.

Model	Serial Nos.
1900	UA-2 and UA-3 with Kit Nos. 114-9016-1 S and 114-9016-3 S installed.
1900C	UB-1 through UB-74 with Kit Nos. 114-9016-1 S and 114-9016-3 S installed.
1900C	UC-1 through UC-162.
1900C Military (C12J)	UD-1 through UD-6.

Compliance: Required within the next 30 calendar days after receipt of this AD, unless already accomplished.

To prevent aerodynamic problems caused by ice formation that could lead to loss of control of the airplane, accomplish the following:

(a) Modify the plumbing on both sides of the instrument air system in accordance with the Accomplishment Instructions of Beech Service Bulletin No. 2428, dated October 1991.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(d) The modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2428, dated October 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

(e) This amendment (39-8173) becomes effective on March 2, 1992, as to all persons except those persons to whom it was made immediately effective by priority letter AD 91-24-15, issued November 18, 1991, which contained this amendment.

Issued in Kansas City, Missouri, on January 22, 1992.

Bobby W. Sexton,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2436 Filed 1-31-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-197-AD; Amendment 39-8152; AD 91-20-51]

Airworthiness Directives; Boeing Model 747-200, 747-300, and 747-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T91-20-51, which was made effective previously to all known U.S. owners and operators of certain Boeing Model 747-200, 747-300, and 747-400 series airplanes by individual telegrams. This AD requires repetitive inspections of the engine number two and engine number three upper strut wing leading edge compartments; repetitive inspections of the strut drains to verify that the drains are not obstructed; and corrective action, if necessary. This amendment is prompted by a fire within engine strut number two of a Boeing Model 747-400 series airplane. The actions specified by this AD are intended to prevent a fire within the engine strut.

DATES: Effective February 18, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T91-20-51, issued September 24, 1991, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 18, 1992.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket No. 91-NM-197-AD, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone (206) 227-2687, fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On September 24, 1991, the FAA issued telegraphic AD T91-20-51, applicable to certain Boeing Model 747-200, 747-300, and 747-400 series airplanes, which requires repetitive inspections of the engine number two and engine number three upper strut wing leading edge compartments and of the strut drains to verify that the drains are not obstructed, and corrective action, if necessary. That action was prompted by a fire within engine strut number two on a Boeing Model 747-400 series airplane. Although the investigation is continuing, the fire appeared to have been caused by electrical arcing between the engine number one electrical power feeder cable and the engine number two fuel feed line in the upper strut wing leading edge compartment of engine strut number two. Arcing could result from chafing or other damage to the electrical power feeder cables. Arcing in this location can create a hole in the fuel tube and provide a simultaneous ignition source. This condition, if not corrected, could result in a fire within the engine strut.

Since similarities exist between the number two engine strut and the number three engine strut installations, and between the Model 747-400 and certain Model 747-200 and 747-300 engine strut installations, this potential unsafe condition may exist with regard to these installations on these airplane models.

When engine strut number two was inspected after the strut fire, the flammable fluid drains in the strut were found to be blocked. Such blockage would lead to the collection of fuel within the strut, which increases the risk of fire. Sufficient similarities exist between the strut drain installation on all four struts of the affected airplanes such that this potential problem may exist with regard to all strut drains on these airplanes.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-24A2168, dated September 24, 1991, which describes procedures to inspect the power feeder cables to detect chafing or damage to the fuel supply tube and procedures to ascertain whether the clearance between the engine fuel supply tube and the electrical power feeder cables is adequate.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T91-20-51 to require repetitive inspections of the

engine number two and engine number three upper strut wing leading edge compartments for chafing or other damage to the fuel supply tube and the electrical power feeder cables, and to determine whether there is sufficient clearance between the engine fuel supply tube and the electrical power feeder cables. The AD also requires repetitive inspections of the strut drains to verify that the drains are not obstructed. Correction of discrepancies found as a result of the inspections is required prior to further flight. The required actions are to be accomplished in accordance with the service bulletin previously described.

Further, this AD also contains a requirement for operators to submit a report to the FAA of the conditions found as a result of the inspections of the electrical power feeder cables and the engine fuel supply tube.

Since it was found that immediate corrective action was required, notice and prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on September 24, 1991, to all known U.S. owners and operators of certain Boeing Model 747–200, 747–300, and 747–400 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91–20–51. Boeing: Amendment 39–8152. Docket 91–NM–197–AD.

Applicability: Model 747–200 and 747–300 series airplanes, line numbers 679, 681, 685, 688, 701, 702, 703, 711, and 719; and Model 747–400 series airplanes, line numbers 696 through 734, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire within the engine strut, accomplish the following:

(a) Within 10 days after the effective date of this amendment, inspect the electrical power feeder cables and the engine fuel supply tube in engine struts two and three for damage or chafing and minimum clearance of 0.375 inch, in accordance with Boeing Alert Service Bulletin 747–24A2168, dated September 24, 1991. If damage is found or if clearance is not within the specified limits, prior to further flight, repair any damage in accordance with that service bulletin and relocate the electrical power feeder cables so that the clearance is more than 0.375 inch. Repeat this inspection at the following intervals:

(1) If the clearance is less than 0.75 inch, repeat the inspection at intervals not to exceed 500 flight hours.

(2) If the clearance is 0.75 inch or greater, repeat the inspection at intervals not to exceed 1,000 flight hours.

(b) Within 10 days after the effective date of this amendment, and thereafter at intervals not to exceed 1,000 flight hours, perform a test of the strut drainage system on all four engine struts in accordance with Boeing Alert Service Bulletin 747–24A2168, dated September 24, 1991. Correct any discrepancies prior to further flight.

(c) Within 15 days after the effective date of this amendment, report the results of the initial inspections required by paragraph (a) of this AD to the Manager, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Ave SW., Renton, Washington 98055–4056. (Facsimile messages may be sent via telephone number (206) 227–1181). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections required by this AD shall be done in accordance with Boeing Alert Service Bulletin 747 24A2168, dated September 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(g) This amendment (39–8152), AD 91–20–51, becomes effective February 18, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T91–20–51, issued September 24, 1991, which contained the requirements of this amendment.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–2437 Filed 1–31–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–CE–42–AD; Amendment 39–8002; AD 91–10–01]

Airworthiness Directives; Collins Traffic Alert and Collision Avoidance (TCAS) II (or 94) Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to aircraft equipped with the Collins TCAS II (or 94) system. This action supersedes priority letter AD 91–10–01, which requires disconnecting the Traffic Alert and Avoidance system in aircraft equipped with the Collins TCAS II (or 94) system, and subsequent modification. Since issuance of priority letter AD 91–10–01, the manufacturer has issued a revision to the service information that is also an acceptable method of compliance. The original issue of the service information remains an acceptable method of compliance. The actions specified by this AD are intended to prevent altitude deviations, which could result in unnecessary pilot/controller communication and controller distraction.

DATES: Effective March 10, 1992. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1992. Comments for inclusion in the Rules Docket must be received on or before April 15, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from Rockwell International, Avionics Group, 400 Collins Road NE., Cedar Rapids, Iowa 52498. This information may also be examined at the Rules Docket at the address below. Send comments on this AD in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 91–CE–42–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Klapprott, Systems and Equipment Branch Manager, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4416.

SUPPLEMENTARY INFORMATION: There have been several reports of Traffic Alert and Collision Avoidance System (TCAS) problems on aircraft that are equipped with the Collins TCAS II (or 94) system. The crew members of the involved aircraft report that targets suddenly appear or are moving at a very high rate of speed toward their aircraft, which causes a traffic advisory (TA) or resolution advisory (RA). This situation results when two TCAS equipped aircraft are in the same vicinity of a Mode S equipped aircraft, and one of the TCAS aircraft is at the same altitude. Under these circumstances, it is possible for the TCAS aircraft at the same altitude to misinterpret the reply evoked by the other TCAS aircraft as a Mode S reply. This results in the Mode S aircraft appearing closer than it actually is and a TA or RA being displayed to the crew. This causes the crew to quickly change altitude, which could result in an undesirable disruption of the Air Traffic Control System.

As a result, the FAA issued priority letter AD 91–10–01 on May 2, 1991, and made it effective immediately as to all known U.S. owners and operators of aircraft equipped with the Collins TCAS II (or 94) systems. The AD requires disconnecting the TCAS II (or 94) system, and subsequent modification in accordance with the instructions in Collins Service Bulletin (SB) C, dated April 24, 1991, or SB No. 7, dated April 4, 1991, whichever is applicable. Since that time, Collins has issued SB C, Revision 1, and SB No. 7, Revision 1, both dated May 20, 1991.

The FAA has determined that the actions required by AD 91–10–01 must still be accomplished and that the original version of the service information or the revision may be used. Since the condition described is likely to exist or develop in other aircraft equipped with Collins Traffic Alert and Collision Avoidance System II (or 94) systems of the same type design, this AD will retain the requirements of priority letter AD 91–10–01, but allow the modification to be accomplished in accordance with the instructions in either with the instructions in Collins Service Bulletin (SB) C, dated April 24, 1991, or No. 7, dated April 4, 1991, whichever is applicable; or Collins SB C, Revision 1, or SB No. 7, Revision 1, both dated May 20, 1991, whichever is applicable. This action will supersede priority letter AD 91–10–01.

Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days. Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket at the address given above. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

91-10-01 Collins: Amendment 39-8002; Docket No. 91-CE-42-AD.

Applicability: All aircraft equipped with the Traffic Alert and Collision Avoidance (TCAS) II (or 94) systems that are installed in, but not limited to, the following aircraft, certificated in any category:

Boeing 727, 727C, 727-100/100C/200/200F airplanes; Boeing 747-100, 200, SR, SP airplanes; McDonnell Douglas DC9-81/82/83/87 and MD-88 airplanes; Aerospatialle ATR42-200/300 airplanes; Lockheed L1011-385-1 airplanes; DeHavilland DHC-7 airplanes; Saab SF340A/B airplanes; and Shorts Brothers SD3-60 airplanes.

Compliance: Required as indicated, unless already accomplished.

To prevent altitude deviations, which could result in unnecessary pilot/controller communication and controller distraction, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (priority letter AD 91-10-01), accomplish the following:

(1) Pull and band the circuit breaker that applies electrical power to the TCAS II (or 94) system.

(2) Fabricate a placard with the following words in ⅛ inch high letters: "TCAS II Inoperative" or "TCAS 94 Inoperative" as appropriate. Install this placard adjacent to the TCAS control unit within the pilot's clear view and operate the aircraft accordingly.

(b) Reactivation of the TCAS II (or 94) system must be accomplished after modification of the Collins TTR-920 Computer in accordance with Collins Service Bulletin (SB) C, dated April 24, 1991, or No. 7, dated April 4, 1991, whichever is applicable, or Collins SB C, Revision 1, or SB No. 7, Revision 1, both dated May 20, 1991, whichever is applicable. This reactivation must be accomplished in accordance with a schedule acceptable to the administrator.

(c) Within the next 30 days after the effective date of this AD, unless already accomplished (priority letter AD 91-10-01), the airlines operating the aircraft affected by this AD must submit to the FAA for approval, a schedule for reactivation of the TCAS II (or 94) system.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate aircraft to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

(f) The modification required by this AD shall be done in accordance with Collins Service Bulletin (SB) C, dated April 24, 1991, or Collins SB No. 7, dated April 4, 1991, whichever is applicable; or whichever of the following two revised service bulletins that is applicable: SB C, Revision 1, which incorporates the following pages:

Pages	Issue level	Date
4 and 5	Revision 1	May 20, 1991.
1, 2, 3 and 6	Original	April 24, 1991.

or Collins SB No. 7, Revision 1, which incorporates the following pages:

Pages	Issue level	Date
1, 4 and 8	Revision 1	May 20, 1991.
2, 3, 5, 6, 7, and 9 through 34.	Original	April 4, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rockwell International, Avionics Group, 400 Collins Road, NE., Cedar Rapids, Iowa 52498. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC.

(g) This amendment (39-8002) supersedes Priority Letter AD 91-10-01.

(h) This amendment (39-8002) becomes effective on March 10, 1992.

Issued in Kansas City, Missouri, on January 24, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2456 Filed 1-31-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-126-AD; Amendment 39-8144; AD 92-02-08]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC-10 series airplanes, which currently requires structural inspections, reporting of the inspection results, and repair or replacement, as necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. This amendment requires the modification of the existing sampling program: to: (a) require additional visual inspections of all Principal Structural Elements (PSEs) on certain airplanes, (b) include expanded/modified PSEs, (c) revise the reporting requirements, and (d) increase the sample size. This amendment is prompted by new data submitted by the manufacturer indicating that additional inspections and an expanded sample size are necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in PSEs. Such cracking, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Effective March 9, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1992.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications and Technical Administrative Support C1-L5B (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen A. Moreland, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310)988-5238.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-22-10, Amendment 39-6330 (54 FR 42291, October 16, 1989), which is applicable to McDonnell Douglas Model DC-10 series airplanes, was published in the **Federal Register** on August 15, 1991 (56 FR 40581). The action proposed to (a) require additional visual inspections of all Principal Structural Elements (PSEs) on certain airplanes, (b) include expanded/modified PSEs, (c) revise the reporting requirements, and (d) increase the sample size.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

Two commenters concurred with the proposed rule.

Two commenters stated that proposed paragraph (b) needs clarification to indicate that it is the May 1990 revision of the McDonnell Douglas Report No. L26-012, DC-10 Supplemental Inspection Document (SID), which is to be followed when reference to "that document" is used to specify Volumes II and III. The FAA concurs. Paragraph (b) of the final rule has been revised accordingly. Additionally, paragraph (a) has been revised to clearly identify the November 1988 revision of the SID as the pertinent service information source.

Three commenters recommended that the changes called out in the proposed rule be issued via a revision to AD 89-22-10. The FAA does not concur. The FAA's current policy is that, whenever a substantive change is made to an existing AD, regardless of whether the change is based on an intentional change or the correction of an unintentional error, the AD must be superseded, rather than revised. Substantive changes are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

One commenter requested that the proposed AD be revised to permit repairs to be accomplished "in accordance with data approved by, or acceptable to, the FAA Administrator." This would permit approval of repairs by Designated Engineering Representatives (DERs) of the McDonnell Douglas Corporation or by organizations which hold SFAR 36 authorization. The FAA does not concur. While DERs and SFAR 36-authorized organizations are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make the discretionary determination as to what the applicable requirement is. Further, it is crucial that the FAA, as well as McDonnell Douglas, be aware of all repairs made to principal structural elements (PSEs) or to their configuration, and that damage tolerance analysis be performed on each repair to establish its effect on the fatigue life of the affected structure.

One operator recommended that the AD be revised to provide guidelines or a procedure by which an oprator could accomplish an inspectrion utilizing a substitute non-destructive testing (NDT) method and receive credit for inspections that were accomplished by that method prior to the FAA granting an alternate means of compliance. The FAA contends that the system currently in place addresses this concern. The nature of the SID program allows the operator to schedule the inspection of aircraft anytime between the start date and the end date. If an alternative method of compliance is granted for a substitute inspection prior to the end date for the mandated inspection, an operator may take retroactive credit for the substitute inspection, provided the inspection was accomplished prior to the end and the operator can produce documentation that the inspection was conducted in accordance with the approved substitute inspection procedures.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 423 Model DC-10 series airplanes of the affected design in the worldwide fleet. It is estimated that 252 airplanes of U.S. registry and 10 U.S. operators will be affected by this AD. Incorporation of the Supplemental Inspection Document program into an operator's maintenance program, as originally required by AD 89-22-10, is estimated to necessitate 1,000 work hours (per operator), at an average labor cost of $55 per work hour. Based on these figures, the cost to the 10 affected U.S. operators to initially incorporate the SID program is estimated to be $550,000.

The incorporation of the additional procedures of this AD action requires approximately 250 additional work hours per operator to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the cost to the 10 affected U.S. operators to incorporate the revisions to the SID program is estimated to be $137,500.

The recurring inspection cost, as originally required by AD 89-22-10, is estimated to be 341 work hours per airplane per year. The procedures added to the program by this AD action require approximately 14 additional work hours per airplane per year to accomplish. The average labor charge is $55 per work hour. Based on these figures, the recurring inspection cost impact of this AD on U.S. operators is estimated to be $19,525 per airplane or $4,920,300 for the affected U.S. fleet.

Based on the above figures, the total cost impact of this AD is estimated to be $5,057,800 for the first year, and $4,920,300 for each year thereafter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6330 and by

adding the following new airworthiness directive:

92-02-08. McDonnell Douglas: Amendment 39-8144. Docket No. 91-NM-126-AD. Supersedes AD89-22-10, Amendment 39-6330.

Applicability: Model DC-10 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within one year after November 20, 1989, (the effective date of AD 89-22-10, Amendment 39-6330), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSEs) defined in section 2 of Volume I of McDonnell Douglas Report No. L26-012, "DC-10 Supplemental Inspection Document (SID)," dated November 1988, in accordance with section 2 of Volume III of the November 1988 document. The non-destructive inspection techniques set forth in Volume II of the SID, dated November 1988, provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of Volume III of the SID, dated November 1988. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

(b) Within 6 months after the effective date of this AD incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSEs) defined in section 2 of Volume I of McDonnell Douglas Report No. L26-012, DC-10 Supplemental Inspection Document (SID), dated May 1990, in accordance with section 2 of Volume III of the May 1990 document. The non-destructive inspection techniques set forth in section 2 and section 4 of Volume II of the SID, dated May 1990, provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of Volume III of the SID, dated May 1990. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

(c) Cracked structure detected during the inspections required by paragraphs (a) and (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(e) An alternative method of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

(f) The inspection requirements shall be done in accordance with McDonnell Douglas Report No. L26-012, DC-10 Supplemental Inspection Document (SID), dated May 1990, which incorporates the following list of effective pages:

VOLUME I

Section	Page number(s)	Date
List of Effective Pages.	Pages A-D	May 1990 (Revision 1).
Introduction	Pages 1-2, 5, 7-9, and 11-20.	December 1988.
	Page 3-4	June 1988.
	Page 6 and 10	May 1990.
1	Pages 1-14	May 1990.
	Pages 15-24	December 1988.
2	Pages i-ii, A-D, 1-15, 19-20, 22-28, 30-41, 43-55, 58-63, 65-102, and 104-124.	December 1988.
	Pages 16-18, 21, 28, 29, 42, 56-57, 64, and 103.	May 1990.
3	Pages i-ii, A-B, 1-18, and 20-34.	December 1988.
	Page 19	May 1990.
4	Pages i-ii, A-D, and 1-70.	December 1988.
	Pages 71-137	May 1990.

VOLUME II

Section	Chapter	Page number(s)	Date
List of Effective Pages.		Pages A-O	May 1990 (Revision 1).
Table of Contents.		Pages i-ii	May 1990 (Revision 1).
1	20-00-00—20-20-00.	All	December 1988.
	20-30-00	Pages 1-24	
	20-40-00—20-60-00.	All	
	20-30-00	Pages 25-26	May 1990.
2	52-30-01	Pages 1 and 4-6.	December 1988.
	52-30-02	Pages 1 and 4-6.	
	52-30-03	Pages 1 and 4-6.	
	52-30-04	Pages 1 and 3-6.	
	53-10-01	Pages 1-2, 4-5, 7-8, and 12.	
	53-10-02	Pages 1 and 3-7.	
	53-10-03	Pages 1 and 3-7, 9, and 11.	
	53-10-04	Pages 1, 6-8, and 11-14.	
	53-10-05	Pages 3-4	
	53-10-06	Pages 1, 4, 6-8, and 12.	
	53-10-07	Pages 1, 4-7, and 11-14.	
	53-10-08	Pages 1 and 5-7.	
	53-20-01	Pages Insert, 1, 3-8, and 10-13.	
	53-20-02	Pages Insert, 1, and 3-5.	
	53-20-03	Pages 1, 3-7, and 9.	
	53-20-04	Pages Insert, 1, 3-5, and 7.	
	53-30-01	Page 11	
	53-30-02	Pages Insert, 1, 3-6, and 8-9.	
	53-30-03	Pages Insert, 1, 3-7, 9, 11, and 14.	
	53-30-04	Pages 1 and 3-9.	
	53-30-05	Pages 1 and 3-9.	
	53-30-06	Pages 1 and 3-9.	
	53-30-07	Pages 1 and 3-9.	
	53-30-08	Pages 1 and 3-12.	
	53-30-09	Pages 1 and 3-13.	
	53-30-10	Pages 1 and 3-13.	
	53-30-11	Pages 1 and 3-13.	
	53-30-12	Pages 1, 3-7, 9-10, and 12.	
	53-40-01	Pages 1-2, 6, 11-14, 16-20, 22, 31-34, and 36-37	
	53-40-02	Pages 1, 3-8, and 10.	
	53-40-03	Pages 1, 3-6, and 8-9.	
	54-40-13	Pages 4-6, 8-9, 11-14, and 17.	
	54-40-13, Series 40.	Pages 1 and 3-10.	
	54-40-14, Series 40.	Page 1	
	54-40-15	Pages 1, 5, 7-9, 12, and 14.	
	54-40-16	Pages 1, 3-4 and 7-12.	

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Section	Chapter	Page number(s)	Date
	55-10-01	Pages 1, 3-7, and 9.	
	55-10-02	Pages 1 and 4-7.	
	55-10-03	Pages 1 and 4-7.	
	55-30-01	Pages 1-2 and 7-9.	
	55-30-02	Pages 1-2, 5-6, 8-11, 16, 18-19, 23, 25, 27-28, 30, and 39.	
	55-30-03	Pages 1 and 5-6.	
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	57-10-01	Pages 1, 5, 7, and 9.	
	57-10-02	Pages 1-2, 5-8, and 10.	
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	57-10-03, Series 30/40.	Pages 1-2, 5, and 7-9.	
	57-20-01	Pages 1-2, 10-11, and 14.	
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	52-30-02	Pages 2-3	
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	53-20-03	Pages 2, 8, and 10.	
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	53-30-01	Pages 1-10 and 12-14.	
	53-30-02	Pages 2 and 7.	
	53-30-03	Pages 2, 8, 10, and 12-13.	
	53-30-04	Page 2	
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	53-30-06	Page 2	
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	53-30-09	Pages 2 and 14.	
	53-30-10	Pages 2 and 14.	
	53-30-11	Pages 2 and 14.	
	53-30-12	Pages 2, 8, and 11.	
	53-40-01	Pages 3-5, 7-10, 15, 21, 23-30, 35.	
	53-40-02	Pages 2 and 9.	
	53-40-03	Pages 2 and 7.	
	54-40-13	Pages 1-3, 7, 10, 15-16, and 18-21.	
	54-40-13, Series 40.	Page 2	
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	54-40-15	Pages 2, 5-6, 10-11 and 13.	
	54-40-16	Pages 2, 4-6 and 13.	
	55-10-01	Pages 2 and 8.	
	55-10-02	Pages 2-3 and 8-10.	
	55-10-03	Pages 2-3 and 8.	
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	55-30-02	Pages 3-4, 7, 12-15, 17, 20-22, 24, 26, 29, and 31-38.	
	55-30-03	Pages 2-4 and 7-8.	
	55-30-04	Pages 2-4 and 7.	
	57-10-01	Pages 2-4, 6, and 8.	
	57-10-02	Pages 3-4 and 9.	
	57-10-03	Pages 2-3, 6, and 11.	
	57-10-03, Series 30/40.	Pages 3-4, 6, and 10.	
	57-20-01	Pages 3-9, 12-13, and 15-16.	
	57-20-02	Pages 2-4, 7, 9, and 11-17.	
	57-20-03	Pages 2-4 and 8-11.	
	57-20-04	Pages 2-6, 8-9, 11, and 13.	
	57-20-05	Pages 2-4, 8-9, and 11.	
	57-20-06	Pages 1-4 and 8-15.	
	57-50-01	Pages 2, 4-5, and 10-13.	
	57-50-02	Pages 1, 3-4, 10-11, and 13-14.	
	57-50-03	Pages 3-4, 7-8, and 10.	
	57-40-04	Pages 2-4 and 9-11.	
	57-50-05	Pages 2 and 5-11.	
	57-50-06	Pages 2-4 and 6.	
3	PSE Cross Reference Table.	Pages 1-4	May 1990.
	AL.01	Pages 1-3	May 1990.
	RS.01-RS.22b.	All	May 1990.
	RS.23	Page 1	May 1990.
		Page 2	December 1988.
	RS.24-TI.01	All	May 1990.
	Probe/Transducer.	All	May 1990.
	Drawings	All	December 1988.
	Fastener	All	December 1988.
4		All	May 1990.

Volume III, in its entirety (sections 1-2 and appendices A-C), is dated May 1990; however, each page is not individually dated.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications and Technical Administrative Support C1-L5B (54-60). Copies may be inspected at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(g) This amendment (39-8144, AD 92-02-08) becomes effective March 9, 1992.

Issued in Renton, Washington, on December 27, 1991.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2438 Filed 1-31-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-148-AD; Amendment 39-8160; AD 92-03-05]

Airworthiness Directives; SAAB-SCANIA Models SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-SCANIA Models SAAB SF-340A and SAAB 340B series airplanes, which requires modification of the exit and dome light assemblies. This amendment is prompted by a recent design review which revealed that the existing combinations of power supply loads and the in-flight temperature gradient for the power packs in the emergency lighting system can lead to a reduction in power pack operating time. The actions specified by this AD are intended to prevent premature failure of the emergency lights after an emergency landing.

DATES: Effective March 9, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1992.

ADDRESSES: The applicable service information may be obtained from SAAB-SCANIA AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 277-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain SAAB-SCANIA Models SF-340A and SAAB 340B series airplanes, was published in the **Federal Register** on August 16, 1991 (56 FR 40813). That action proposed to require modification of the exit and dome light assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters supported the rule.

Since issuance of the Notice, SAAB-SCANIA has issued Revision 2 to Service Bulletin 340-33-030, dated September 27, 1991, which deletes certain airplane serial numbers that are not affected by this modification due to a different cabin configuration in these airplanes. The FAA has revised the final rule to cite this latest revision to the service bulletin as the appropriate source for service information. Furthermore, since the revised service bulletin changes the applicability, the final rule references this revised service bulletin for applicability.

The manufacturer noted that the company's name should be written as "SAAB-SCANIA" or "Saab-Scania," and that the airplane model names should be referred to as "SAAB SF340A" and "SAAB 340B." The FAA acknowledges this information and has revised the references to the manufacturer and airplane models accordingly throughout the rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 121 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $297 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,592.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-03-05. SAAB-SCANIA: Amendment 39-8160. Docket No. 91-NM-148-AD.

Applicability: Models SAAB SF340A and SAAB 340B series airplanes; as listed in SAAB Service Bulletin 340-33-030, Revision 2, dated September 27, 1991; certified in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent premature failure of the emergency lights after an emergency landing, accomplish the following:

(a) Within 120 days after the effective date of this AD, modify the exit and dome light assemblies, in accordance with SAAB Service Bulletin 340-33-030, Revision 2, dated September 27, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(d) The modification required by this AD shall be done in accordance with SAAB Service Bulletin 340–33–030, Revision 2, dated September 27, 1991, which contains the following list of effective pages:

Page No.	Revision level	Date
1–2, 4	2	September 27, 1991.
6–7	1	April 29,1991.
3, 5, 8–10	(original)	(undated).

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB–SCANIA AB, Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW, room 8401, Washington, DC.

(e) This amendment (39–8160), AD 92–03–05, becomes effective March 9, 1992.

Issued in Renton, Washington January 9, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–2503 Filed 1–31–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–200–AD; Amendment 39–8153; AD 92–02–16]

Airworthiness Directives; Short Brothers, PLC, Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Short Brothers Model SD3–60 series airplanes, which requires a one-time visual inspection of the rudder torque tube fitting to detect signs of exfoliation corrosion, and repair, if necessary; and an application of pre-treatment penetrant and corrosion preventative. This amendment is prompted by reports indicating that the rudder torque tube fitting has been subject to exfoliation corrosion. The actions specified by this AD are intended to prevent failure of the rudder torque tube fitting and reduced controllability of the airplane.

DATES: Effective March 9, 1992.

The corporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202–3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Standardization Branch, ANM–113; telephone (206) 227–2141; fax (206) 227–1320. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Short Brothers Model SD3–60 series airplanes, was published in the **Federal Register** on October 23, 1991 (56 FR 54810). That action proposed to require a one-time visual inspection of the rudder torque tube fitting to detect signs of exfoliation corrosion, and repair, if necessary; and an application of pre-treatment penetrant and corrosion preventative.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter agreed with the proposed requirements of this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described.

It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,500.

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. (1354)(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–02–16. Short Brothers: Amendment 39–8153. Docket 91–NM–200–AD.

Applicability. Model SD3–60 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rudder torque tube fitting and reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a visual inspection of the rudder torque tube fitting to detect signs of exfoliation corrosion, in accordance with Short Brothers Service Bulletin SD360–55–17, dated May 7, 1991.

(b) If exfoliation corrosion is found as a result of the inspection required by paragraph (a) of this AD, accomplish the following:

(1) Report findings of exfoliation corrosion to Short Brothers, PLC, in accordance with the service bulletin. The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 2120–0056.

(2) If the corrosion is within the limits specified in Part B of the service bulletin, prior to further flight, remove the corrosion and apply pre-treatment penetrant and

corrosion preventative in accordance with the service bulletin.

(3) If the corrosion exceeds the limits specified in Part B of the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(c) If no signs of exfoliation corrosion are found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, apply pre-treatment penetrant and corrosion preventative in accordance with the service bulletin.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(f) The inspection and application requirements of this AD shall be done in accordance with Short Brothers Service Bulletin SD360-55-17, dated May 7, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

(g) This amendment (39-8153), AD 92-02-16, becomes effective March 9, 1992.

Issued in Renton, Washington, on January 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-2435 Filed 1-31-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

RIN 0960-AD21

Federal Old-Age, Survivors, and Disability Insurance; Payment of Benefits to a Child Adopted by a Surviving Spouse

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule amends our regulations to reflect section 5104 of Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990, enacted on November 5, 1990. Section 5104 amended section 216(e) of the Social Security Act (the Act) to provide that a child who is legally adopted by an insured person's surviving spouse after the insured's death may be entitled to child's insurance benefits if the child was either living with the insured individual or receiving at least one-half of his or her support from the insured individual at the time of the death of the insured individual. The provisions of section 5104 were effective with respect to child's insurance benefits payable for months after December 1990, but only on the basis of applications filed on or after January 1, 1991.

EFFECTIVE DATE: This rule is effective on February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Cassandra Bond, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1794.

SUPPLEMENTARY INFORMATION: Prior to the enactment of section 5104 of Public Law 101-508, a child legally adopted by an insured person's surviving spouse after the insured's death was considered dependent upon the insured as of the date of death if: (1) The child was living in the insured's household at the time of the insured's death; (2) the child was not receiving regular contributions for his or her support from someone other than the insured or the insured's spouse, or from a public or private welfare organization, at the time of the insured's death; and (3) the insured had started adoption proceedings before he or she died, or the surviving spouse of the insured adopted the child within 2 years of the insured's death. As noted above, section 5104 of Public Law 101-508 amended the Act so that a child adopted by the insured's surviving spouse after the insured's death is considered dependent if the child was either living with or receiving one-half support from the insured at the time of the death of the insured. Section 5104 also eliminated the requirement that the child must not have been receiving regular contributions from any source other than the insured or the insured's spouse at the time of the insured's death. Section 5104 did not change the requirement in the Act that the insured must have started adoption proceedings before he or she died or the surviving spouse must have adopted the child within 2 years of the insured's death. This final rule amends § 404.362(c)(1) of our regulations to reflect this statutory change.

Regulatory Procedures

We are publishing this rule without prior notice and public comment theron. The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of regulations. The APA provides exceptions to its notice and comment requirements when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that under 5 U.S.C. 553(b)(B) good cause exists for waiver of proposed rulemaking and public comment procedures in the case of this rule because we are only reflecting a statutory change. This change is not discretionary and does not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these changes to our regulations are being issued as a final rule.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because the issuance of this regulation is not expected to result in significant costs. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This regulation imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because this rule will affect only individuals.

Therefore a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security Disability Insurance; 93.803, Social Security Retirement Insurance; and 93.805, Social Security Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

Dated: October 11, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 12, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Part 404 of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

2. In § 404.362, paragraph (c)(1)(i) is revised; paragraph (c)(1)(ii) is removed; and paragraph (c)(1)(iii) is redesignated paragraph (c)(1)(ii) and republished to read as follows:

§ 404.362 When a legally adopted child is dependent.

* * * * *

(c) *Adoption by the insured's surviving spouse*—(1) *General.* If you are legally adopted by the insured's surviving spouse after the insured's death, you are considered dependent upon the insured as of the date of his or her death if—

(i) You were either living with or receiving at least one-half of your support from the insured at the time of his or her death; and,

(ii) The insured had started adoption proceedings before he or she died; or if the insured had not started the adoption proceedings before he or she died, his or her surviving spouse began and completed the adoption within 2 years of the insured's death.

* * * * *

[FR Doc. 92–2495 Filed 1–31–92; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 177

[Docket No. 85F–0469]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyestercarbonate resin produced by the condensation of 4,4'-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride for use in contact with food. This action is in response to a petition filed by the General Electric Co.

DATES: Effective February 3, 1992; written objections and requests for a hearing by March 4, 1992. The Director of the Office of the Federal Register approves the incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 177.1585 (c)(1) and (c)(3), effective February 3, 1992.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 29, 1985 (50 FR 43795), FDA announced that a food additive petition (FAP 5B3898) had been filed by the General Electric Co., Pittsfield, MA 01201, proposing that § 177.1580 *Polycarbonate resins* (21 CFR 177.1850) be amended to provide for the safe use of polycarbonate resins produced by condensation of 4,4'-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride for use in contact with food. Upon review of the chemistry of the condensation reaction and the composition of the product, the agency concluded that the new copolymer is a polyestercarbonate resin rather than a polycarbonate resin. Therefore, in a notice published in the **Federal Register** of May 8, 1991 (56 FR 21388), FDA amended the filing notice for the petition and proposed to establish a new food additive regulation, § 177.1585 *Polyestercarbonate resins* (21 CFR 177.1585), rather than to amend § 177.1580 as was proposed in the original filing notice.

In its evaluation of the safety of this additive, FDA has reviewed the safety of both the additive itself and the starting materials used to manufacture the additive. Although the additive itself has not been found to cause cancer, it has been found to contain residual amounts of methylene chloride which has been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as methylene chloride, are commonly found as contaminants in chemical products, including food additives. Therefore, the agency has evaluated the potential ingestion of this carcinogenic substance from its use in polyestercarbonate resins in contact with food.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes the additive is safe for the use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The Delaney anticancer provision of the general safety clause of the Food Additives Amendment (section 409(c)(3)(A) of the act (21 U.S.C. 348(c)(3)(A))) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive. The

agency's position is supported by *Scott v. FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the polyestercarbonate resin as food packaging will result in levels of exposure to the additive that are quite low. FDA does not ordinarily consider toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data in its files for the starting materials used to manufacture this additive. No adverse effects were reported in these studies.

Because polyestercarbonate resin, which contains residual methylene chloride, has not been shown to cause cancer, the Delaney anticancer provision (section 409(c)(3)(A) of the Act) does not apply to it. However, FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemical that is present as an impurity in the additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity, methylene chloride, has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Methylene Chloride

Based on the fraction of the daily diet that may be in contact with surfaces containing polyestercarbonate resin, and on the level of methylene chloride that may be present in the additive, FDA estimated the hypothetical worst-case exposure to methylene chloride from the use of polyestercarbonate resin food-contact articles to be less than 15 micrograms per person per day (Ref. 3). The agency used data in a National Toxicology Program report (No. 306: 1986), on inhalation studies in F344/N rats and B6C3F$_1$ mice to estimate the upper-bound limit of lifetime human risk from exposure to methylene chloride stemming from the proposed use of polyestercarbonate resins (Ref. 4). The results of the bioassays demonstrated that methylene chloride was carcinogenic in male and female B6C3F$_1$ mice under the conditions of the study. The test material caused an increased incidence of liver cell neoplasms and lung neoplasms in male and female mice.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed these bioassays and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on methylene chloride (Ref. 5). The committee further concluded that an estimate of the upper-bound human risk from exposure to methylene chloride stemming from the proposed use of polyestercarbonate resins could be calculated from the bioassays. The agency used female mouse data for risk assessment because the female mouse data were the most appropriate and demonstrated the highest potency for methylene chloride.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the mouse inhalation study to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine with reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on a worst-case exposure of less than 15 micrograms per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from exposure to methylene chloride from the use of polyestercarbonate resins is 1×10^{-7}, or 1 in 10 million (Ref. 6). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged individual exposure to methylene chloride is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to methylene chloride that might result from the proposed use of polyestercarbonate resin food-contact articles.

B. Need for a Specification

The agency has also considered whether a specification is necessary to control the amount of methylene chloride impurity in the food additive. The agency finds that a specification is necessary to insure that the risk from methylene chloride resulting from the proposed use of the polyestercarbonate resins in food-contact application is insignificant and that use of the resin is safe. Therefore, the regulations set forth in this document prescribe that polyestercarbonate resin articles in the finished form shall not contain residual methylene chloride levels in excess of 5 parts per million.

III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed uses for the additive in food-contact articles are safe. Based on this information the agency has also concluded that the additive will have its intended technical effect and, therefore, that a new § 177.1585 should be established as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch

(address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before March 4, 1992, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the Federal Register.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogen Testing Programs," in "Food Safety: Where are We?" Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by F. Homburger, J.K. Marquis, and S. Karger, New York, NY, pp. 24 to 33, 1985.

3. Memorandum dated February 1, 1989, from the Food and Color Additive Review Section to the Indirect Additives Branch, concerning "FAP 5B3898—General Electric Co.—exposure to methylene chloride."

4. "Toxicology and Carcinogenesis Studies of Dichloromethane (Methylene Chloride) (CAS Reg. No. 75–09–2) in F344/N Rats and B6C3F$_1$ Mice" (Inhalation Studies), National Toxicology Program Technical Report Series, No. 306 (1986).

5. Memorandum of conference, from the Cancer Assessment Committee, "Methylene Chloride," dated January 20, 1983, August 8, 1984, and June 13, 1985.

6. Memorandum dated February 17, 1989, from the Quantitative Risk Assessment Committee, concerning estimation of upper-bound lifetime risk from methylene chloride for uses requested in FAP 5B3898 (General Electric Co.).

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. New § 177.1585 is added to subpart B to read as follows:

§ 177.1585 Polyestercarbonate resins.

Polyestercarbonate resins may be safely used as articles or components of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, or holding food, in accordance with the following prescribed conditions:

(a) Polyestercarbonate resins (CAS Reg. No. 71519–80–7) are produced by the condensation of 4,4'-isopropylidenediphenol, carbonyl chloride, terephthaloyl chloride, and isophthaloyl chloride such that the resins are composed of 70 to 85 percent ester, of which up to 10 percent is the terephthaloyl isomer. The resins are manufactured using a phthaloyl chloride/carbonyl chloride mole ratio of 2.3–4.0/1 and an isophthaloyl chloride/terephthaloyl chloride mole ratio of 9.0/1 or greater.

(b) *Optional adjuvants.* The optional adjuvant substances required in the production of resins identified in paragraph (a) of this section may include:

(1) Substances used in accordance with § 174.5 of this chapter.

(2) Substances identified in § 177.1580(b).

(3) Substances regulated in § 178.2010(b) of this chapter for use in polycarbonate resins complying with § 177.1580:

Provided, That the substances are used in accordance with any limitation on concentration, conditions of use, and food types specified in § 178.2010(b) of this chapter.

(c) Polyestercarbonate resins shall conform to the specifications prescribed in paragraph (c)(1) of this section and shall meet the extractive limitations prescribed in paragraph (c)(2) of this section.

(1) *Specifications.* Polyestercarbonate resins identified in paragraph (a) of this section can be identified by their characteristic infrared spectrum. The solution intrinsic viscosity of the polyestercarbonate resins shall have a range of 0.50 to 0.58 deciliter per gram as determined by a method titled, "Intrinsic Viscosity (IV) of Lexan® Polycarbonate Resin by a Single Point Method Using Dichloromethane as the Solvent," developed by the General Electric Co., September 20, 1985, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(2) *Extractives limitations.* The polyestercarbonate resins to be tested shall be ground or cut into small particles that will pass through a U.S. standard sieve No. 6 and that will be held on U.S. standard sieve No. 10.

(i) Polyestercarbonate resins, when extracted with distilled water at reflux temperature for 6 hours, shall yield total nonvolatile extractives not to exceed 0.005 percent by weight of the resins.

(ii) Polyestercarbonate resins, when extracted with 50 percent (by volume) ethyl alcohol in distilled water at reflux temperature for 6 hours, shall yield total nonvolatile extractives not to exceed 0.005 percent by weight of the resins.

(iii) Polyestercarbonate resins, when extracted with *n*-heptane at reflux temperature for 6 hours, shall yield total nonvolatile extractives not to exceed 0.002 percent by weight of the resins.

(3) *Residual methylene chloride levels in polyestercarbonate resins.* Polyestercarbonate resin articles in the finished form shall not contain residual methylene chloride in excess of 5 parts per million as determined by a method titled "Analytical Method for Determination of Residual Methylene Chloride in Polyestercarbonate Resin," developed by the General Electric Co., July 23, 1991, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the Division of Food and

Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

Dated: January 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–2403 Filed 1–31–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket N–92–3381; FR–3183–N–01]

Manufactured Home Construction and Safety Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Interpretative bulletin.

SUMMARY: The Department has been asked to determine whether a certain style of range hood, where the side of the projection is beveled inward at 30 degrees, could be regarded as meeting the requirements of 24 CFR 3280.204(a). Based upon a review of the range hood design and the available technical research, the Department has concluded that the range hood style in question provides equivalent performance to the requirements in § 3280.204(a) of the Manufactured Home Construction and Safety Standards.

EFFECTIVE DATE: This Interpretative Bulletin is effective on February 3, 1992.

FOR FURTHER INFORMATION CONTACT: David C. Nimmer, Director Office of Manufactured Housing and Regulatory Functions, Department of Housing and Urban Development, 451 Seventh Street, SW., room 9156, Washington, DC 20410–8000. Telephones: (voice) (202) 708–1590; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this Interpretative Bulletin (I.B.) is to announce a waiver with respect to the dimensional requirements for the metal range hood protecting kitchen cabinets over a cooking range or cook top as required by § 3280.204(a).

The applicable part of § 3280.204(a) states:

> The cabinet area over the cooking range or cook tops shall be protected by a metal hood (26-gauge sheet metal, or .017 stainless steel, or .024 aluminum, or .020 copper) with not less than a 3 inch eyebrow projecting horizontally from the front cabinet face. The 5/16 inch thick gypsum board or equivalent material which is above the top of the hood may be supported by the hood. A 3/8 inch enclosed air space shall be provided between the bottom surface of the cabinet and the gypsum board or equivalent material. The hood shall be at least as wide as the cooking range.

The Department has been advised that a certain style of range hood does not comply with the Standards in all respects. Because the side of the projection is beveled inward at 30 degrees, it does not provide the minimum 3 inch eyebrow for the entire width of the cooking range or cook top. Based upon other features of the style of range hood, the supplier has requested that the Department issue a waiver to the Standards in accordance with 24 CFR 3280.1(b).

The range hood style in question meets the Standards in all other respects. It has a 6 inch eyebrow projection in front of the cabinets, exceeding the Standards by 3 inches. The hood has a total depth of 18 inches, and conforms to the width requirement for the 12 inches directly underneath the cabinets. It is the first 3 inches of the hood projection that represent a slight non-conformance with the Standards. It appears that this situation has existed for some time and that most range hoods exceed the requirements of the Standards by a significant margin.

In 1976 the National Bureau of Standards issued a report "NBSIR 75–780, Evaluation of the Fire Hazard in a Mobile Home Resulting from an Ignition on the Kitchen Range." The testing demonstrated that a 26 gauge metal range hood could significantly increase the time between flame impingement on the bottom of the cabinet surface and ignition. The hood tested was as wide as the range with a hood height of 4½ inches". The eyebrow extended 5 inches from the face of the cabinets. The test demonstrated the effect of using a range hood against having no hood. Propagation of flame around different size hoods and hood configurations was not examined.

Based upon the available evidence, the Department finds that the range hood style in question provides equivalent performance to the requirements in § 3280.204(a) of the Standards. Since the Department's evaluation of the range hood style is that it provides at least equivalent protection to that offered under § 3280.204(a), the Secretary is issuing this Interpretative Bulletin to give notice that certain provisions of § 3280.204(a) are waived as follows:

Interpretative Bulletin C–1–91

Notice of Waiver, 24 CFR 3280.204(a)

Kitchen Cabinet Protection, dimensions of the range hood.

Section 3280.204(a) requires that the metal hood over the cooking range be at least as wide as the cooking range or cook top and project at least 3 inches horizontally from the front of the cabinets it protects.

Waiver of 24 CFR 3280.204(a)

The requirements in Section 3280.204(a) which states "the hood shall be at least as wide as the cooking range" is waived, provided that: (1) the width of the hood is maintained as wide as the range directly underneath the protected kitchen cabinet; (2) the angle at which the eyebrow is beveled inward does not exceed 30 degrees; (3) the horizontal projection from the cabinet face is at least 5 inches; (4) the installation of the range hood complies with § 3280.204(a) in all other respects. This Interpretative Bulletin, Notice of Waiver is issued pursuant to 24 CFR 3280.1(b) and 24 CFR 3282.113.

Accordingly, authority is exercised under 24 CFR 3280.1 and 24 CFR 3282.113 to issue an Interpretative Bulletin to give notice that certain provisions of § 3280.204(a) will be waived under certain circumstances.

Dated: January 16, 1992.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 92–2418 Filed 1–31–92; 8:45 am]

BILLING CODE 4210–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–4031–7]

Requirements for Preparation, Adoption and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action adds a general definition of volatile organic compounds (VOC) to EPA's regulations governing

the preparation of State implementation plans (SIP's) which are required under title I of the Clean Air Act (Act). Today's action also incorporates this definition into various SIP-related rules, including EPA's new source review rules and the Federal implementation plan (FIP) rules for the Chicago area. The definition excludes a number of organic compounds from the definition of VOC on the basis that they are negligibly reactive and do not contribute to tropospheric ozone formation.

EFFECTIVE DATE: This rule is effective March 4, 1992.

ADDRESSES: *Docket:* Pursuant to section 307(d)(1) (B), (I), and (U) of the Act, 42 U.S.C. 7607(d)(1) (B), (I), and (U), this action is subject to the procedural requirements of section 307(d). Therefore, EPA has established a public docket for this action, A–90–27, which is available for public inspection and copying between 8:30 a.m.–12 p.m. and 1:30 p.m–3:30 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, room 4, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kent Berry, Office of Air Quality Planning and Standards, Air Quality Management Division (MD–15), Research Triangle Park, NC 27711, phone (FTS) 629–5505, (919) 541–5505.

SUPPLEMENTARY INFORMATION: On June 28, 1989 (54 FR 27286), EPA promulgated changes to its new source review rules at 40 CFR 51.165 (Permit Requirements); 51.166 (Prevention of Significant Deterioration of Air Quality); Part 51, Appendix S (Emission Offset Interpretative Ruling); 52.21 (Prevention of Significant Deterioration of Air Quality); and 52.24 (Statutory Restriction on New Souces). One of the changes made was to amend the definition of VOC in these rules to exlude the compounds EPA had previously determined to be negligibly reactive (see 42 FR 35314, July 8, 1977; 44 FR 32043, June 4, 1979; 45 FR 32424, May 15, 1980; 45 FR 48941, July 22, 1980; 54 FR 1987, January 18, 1989). On August 18, 1989, the Minnesota Mining and Manufacturing Company (3M) filed a petition for review (*Minnesota Mining and Manufacturing Company* v. *EPA*, (D.C. Circuit No. 89–1500)) of these rules for EPA's failure to add certain perfluorocarbon (PFC) compounds to the list of exempt compounds that are negligibly reactive. On February 16, 1990, 3M submitted a rulemaking petition requesting EPA to take a number of associated actions with regard to PFC's.

On December 27, 1989 (54 FR 53088) and June 29, 1990 (55 FR 26814), as a result of a court order and Illinois' failure to adopt reasonably available control technology (RACT) for VOC sources in the Chicago area as required by the Act, EPA published proposed and final Federal RACT rules for the Chicago area of Illinois (Cook, Dupage, Kane, Lake, McHenry, and Will Counties). The rulemaking contained a definition of volatile organic material or volatile organic compound which, in effect, exluded from that definition certain organic compounds that EPA had determined in previously-issued policy statements were negligibly reactive and do not contribute to violations of the national ambient air quality standards (NAAQS) for ozone.

On March 18, 1991 (56 FR 11418), EPA revised the previously-issued policy statements and added five halocarbon compounds and four classes of perfluorocarbon compounds to the list of organic compounds which are considered negligibly reactive, do not contribute to violations of the ozone NAAQS, and may be excluded from SIP control measures intended to attain and maintain the ozone NAAQS. The compounds added to the negligibly-reactive list are listed in Table 1.

TABLE 1

Compound	Chemical name	CAS No.
HCFC 124	Ethane, 2-chloro-1,1,1,2-tetrafluoro-.	2837–89–0
HFC 125	Ethane, pentafluoro-	354–33–6
HFC 134	Ethane, 1,1,2,2,-tetrafluoro-.	359–35–3
HFC 143a	Ethane, 1,1,1-trifluoro-	420–46–2
HFC 152a	Ethane, 1,1-difluoro	75–37–6

Four Classes of Perfluorocarbon Compounds

1. Cyclic, branched, or linear, completely fluorinated alkanes.
2. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.
3. Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations.
4. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

Proposed Actions

The EPA has determined that with respect to tropospheric ozone formation, the potential health and environmental impacts of the compounds that the Agency has determined to be negligibly-photochemically reactive (as reflected in March 18, 1991 revised policy statement) do not vary by location or use. Consequently, EPA believes that no purpose would be served by leaving the reactivity issue open to debate in individual SIP proceedings with respect to the compounds listed in the revised policy statement. Therefore, on March 18, 1991 (56 FR 11387), EPA also proposed to add a general definition of VOC to 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans) to be used in all cases for developing SIP's to attain the ozone NAAQS. The proposed definition, to be codified at 40 CFR 51.100(s), tracked the definition of VOC currently promulgated in various sections of both parts 51 and 52 (51.165; 51.166; part 51, appendix S; 52.21; 52.24; 52.741) by excluding the 15 chemicals EPA has previously determined to be negligibly reactive and by adding the chemicals listed in Table 1 to the negligibly-reactive list. In addition, EPA proposed that the definition of VOC in each of the above sections be replaced by a reference to the general definition at section 51.100(s). As indicated in the March 18, 1991 proposal, compounds that EPA has determined to be negligibly reactive may not be used for emissions netting (see, e.g., 40 CFR 51.166(b)(2)(i)), offsetting (see 40 CFR part 51, appendix S), or trading (see Emissions Trading Policy Statement, 51 FR 43814, December 4, 1986) with reactive VOC's for ozone purposes. Likewise, increases or decreases of the listed negligibly-reactive compounds are to be ignored completely in any new source review (NSR) applicability determinations. Finally, the proposal indicated that if the proposed general definition were finally adopted, EPA would then withdraw as moot its revised policy statement on VOC reactivity.

The proposed revision to the Chicago FIP rules also proposed to delete a provision for a 1-year exclusion for four perfluorocarbon classes at the 3M Bedford Park facility in Cook County, Illinois. The provision which was proposed to be deleted from 40 CFR 52.741(a)(3) states:

> In addition, for the 3M Bedford Park facility in Cook County, the following compounds shall not be considered as volatile organic material or volatile organic compounds (and are, therefore, to be treated as water for the purpose of calculating the "less water" part of the coating or ink composition) for a period of time not to exceed one year after the date EPA acts on 3M's petition, pending as of the date promulgation of this rule, which seeks to have these compounds classified as exempt compounds: cyclic, branched, or linear, completely fluorinated alkanes, cyclic, branched, or linear, completely fluorinated ethers with no unsaturations, cyclic

branched, or linear, completely fluorinated tertiary amines with no unsaturations, and sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

The proposal indicated that upon final action on the proposed revision to the Chicago FIP, the exclusion for this facility will no longer be necessary since the proposed revision to the VOC definition allows these compounds to be excluded at all facilities in the counties covered by the FIP rules.

Comments on Proposal and EPA Responses

In accordance with section 307(d) of the amended Act, today's action is accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period. Seven commenters submitted written comments in response to EPA's March 18, 1991 proposal. Any significant comments and EPA's responses are summarized below. Finally, in the proposal for today's action, EPA indicated that interested persons could request that EPA hold a public hearing on the proposed action (see section 307(d)(5)(ii) of the amended Act). The EPA received no such requests for a public hearing and, therefore, did not hold one.

Comment: One commenter noted that EPA's concern about the difficulties in measuring exempt VOC's used in paints and other coatings is not applicable to PFC's since current uses of PFC's do not include coatings.

Response: While this fact may reduce EPA's concern about the examples illustrating potential measurement difficulties that were discussed in the proposal, the Agency still believes that it is necessary for the purpose of determining compliance with today's action and other related actions to retain the proposed provisions allowing EPA or a State to require a source owner to provide monitoring methods and monitoring results demonstrating the amount of negligibly-reactive compounds in the source's emission. The commenter also urged EPA to carry forward the VOC definition to other related ozone SIP actions. As indicated above, this is the Agency's intent.

Comment: Another commenter urged that EPA finalize its proposal of October 24, 1983 (48 FR 49097) to add perchloroethylene to the list of negligibly-reactive VOC's. The commenter further asserted that "[t]here is no justification for control of this substance as a smog precursor."

Response: The March 18, 1991 proposed rule and simultaneous revision to EPA's negligible reactivity policy statement were largely in response to administrative petitions by 3M and the Alliance for Responsible CFC Policy (see 56 FR 11387 and 56 FR 11418). Thus, EPA expressly indicated that the proposed rule was "strictly limited to whether EPA should codify in regulatory form its current reactivity policy" and "does not extend to compounds not presently listed as negligibly reactive" (see 56 FR 11388, col. 3). Therefore, the commenter's request that EPA review the negligible reactivity of a compound not presently included in the existing reactivity policy is outside the scope of the proposed rule and today's final action.

There are additional impediments to addressing perchloroethylene in today's action. The 1983 "proposal" referenced by the commenter was a proposed revision to EPA's policy statement on negligibly reactive VOC's. No regulatory language was proposed, and EPA did not suggest that it would adopt any final regulation pursuant to the notice. As such, the 1983 action was published in the notices section of the **Federal Register**. Also, as suggested, EPA's then-existing policy statement was never finally revised to include perchloroethylene among the negligibly-reactive VOC's. In comparison, today's action promulgated a recently-proposed regulation addressing negligibly-reactive VOC's consistent with EPA's existing policy and codifies appropriate regulatory language, including a formal definition of VOC's. Thus, EPA could not take final regulatory action on the 1983 proposed revision to a policy statement in today's final rulemaking. Rather, EPA would have to first re-propose a regulatory definition of VOC's that excluded perchloroethylene. Such a course would interpose significant delay in this rulemaking. The EPA declines to take this path.

In sum, EPA limited the scope of this rulemaking to codification of its existing policy. If in this rulemaking, and in similar circumstances, EPA was required to address as a final regulatory matter every potentially related issue, Agency action would become increasingly intractable and in some cases virtually stymied (see also *Group Against Smog & Pollution* v. *U.S. EPA*, 665, F. 2d 1284 (D.C. Cir. 1981) (affirming EPA's discretion to limit reasonably the scope of rulemaking proceedings). Further, as discussed below, an administrative remedy exists for those seeking treatment of compounds as negligibly reactive.

Comment: One commenter requested that the VOC definition (1) specify a test method for determining negligible photochemical reactivity for the purpose of excluding other substances, (2) specify a vapor pressure cutoff (e.g., 0.1 mm of mercury at standard conditions) for exclusion of VOC's on the basis of their low volatility without regard to their atmospheric chemistry, and (3) allow for comparison of reactivity constants, i.e, kOH, with ethane to determine negligible reactivity. As noted previously, the March 1991 proposal was limited to formal codification of EPA's existing policy statement on negligibly-reactive compounds (see previous discussion and 56 FR at 11388, col. 3 (March 18, 1991)). The EPA did not intend to place into question in this rulemaking the consideration of whether additional compounds are negligibly reactive or its policy approach for determining what qualifies as a negligibly-reactive compound. The commenter has requested a fundamental revision of EPA's present policy. The commenter noted that EPA's proposed definition of VOC's included any compounds which participate in atmospheric photochemical reactions and excluded from regulation as VOC's only specified organic compounds. The commenter asserted that this definition exceeds the Agency's statutory authority and requested instead that EPA codify a definition of VOC's which allows for the exclusion of any compounds meeting, for example, certain vapor pressure cutoffs or other tests.

The EPA disagrees with the commenter's suggestion that EPA's definition of VOC exceeds its statutory authority to regulate ozone precursors. The EPA's definition embodies a reasonable policy choice to regulate organic compounds as VOC's absent an adequate showing and determination by EPA that a particular compound is negligibly reactive. There are tens of thousands of organic compounds in commerce. Further, almost every organic compound in the ambient air in a gaseous form is reactive. Only a very small percentage of the thousands of volatile organic compounds in commerce may be negligibly reactive. While it may be theoretically possible to craft a definition of VOC that includes test methods, vapor pressures, or other indicia of reactivity, this effort would involve a significant commitment of EPA's time and resources, including significant technical and policy analyses. The commenter himself did not present any technical data supporting his recommendations. The EPA has carefully weighed the prudence of revisiting its policy in today's final action considering, for example, the

potential public resources involved and competing Agency priorities. Because there are thousands of organic compounds at issue and because a very small fraction of these compounds may be reactive, EPA has concluded that it is an administrative necessity and reasonable to define VOC to include all organic compounds except those EPA has determined to be negligibly reactive. The EPA's policy choice also was informed by the reasonable avenue for recourse available to those who disagree with EPA's policy approach. As the commenter acknowledged, EPA has reviewed and granted administrative petitions or formal requests seeking treatment of compounds as negligibly reactive. In fact, today's action effectively codifies in regulatory form EPA's approval of several such requests (see, e.g., 56 FR 11418 (March 18, 1991) revising EPA's then-existing policy on negligibly-reactive VOC's in light of two formal requests from 3M and the Alliance for Responsible CFC Policy). Now that EPA's existing policy has been formally codified, those seeking treatment of compounds as negligibly reactive could file an administrative petition with EPA requesting revision of the regulatory definition of VOC's (see 5 U.S.C. 553(e)). The EPA's balancing of complex policy considerations here is precisely the type of inquiry EPA has been charged with in carrying out its many statutory duties. In sum, the policy approach embodied in EPA's definition of VOC is reasonably related to the statutory goal of ensuring attainment and maintenance of the ozone NAAQS and is a policy choice clearly within the Agency's discretion.

Comment: Two commenters urged that EPA make clear that it will be reviewing ozone SIP's with a view to assuring that "excluded" compounds, however they may be regulated under State or local law, are not regulated as VOC's as part of a federally-approved SIP.

Response: As EPA has stated previously (45 FR 48941, July 22, 1980), the Agency will not approve or enforce measures controlling substances EPA has determined to be negligibly reactive as part of a federally-approved ozone SIP. However, EPA will not disapprove a plan regulating negligibly-reactive substances or otherwise seek to require States to exclude chemicals on EPA's list of negligibly-reactive compounds from their ozone SIP's. Under section 116 of the Act, States generally have the authority to go beyond the minimum Federal requirements of the Act. Accordingly, if a State chooses to regulate negligibly-reactive compounds as VOC's, such rules will still be enforceable by the State, but not by EPA.

Comment: The definition should provide further clarification of whether certain carbon compounds fall within the scope of the VOC definition by incorporating the definition of "organic compound" currently promulgated under 40 CFR 52.741(a).

Response: The EPA agrees with this suggestion and has included in the definition an exclusion for carbon monoxide, carbon dioxide, carbonic acid, metallic carbides and carbonates, and ammonium carbonate, which are effectively excluded by the definitions under 40 CFR 52.741(a). This is not a substantive change but merely a clarification of what carbon compounds are well understood by the scientific community not to be considered as organic, and, therefore, could not be volatile organic compounds. Similarly, minor technical changes have been made to identify the specific chemical name and structure of several of the listed compounds.

Comment: The definition should require that any compounds excluded from any VOC emission limit compliance determination be adequately quantified. Also, the provision allowing EPA or the State to require a source owner to submit monitoring methods or testing methods and results in order to exclude negligibly-reactive compounds should be dropped as long as the "adequately quantified" test is met.

Response: The EPA agrees with the first comment but, as noted above, continues to believe that the provision allowing the enforcement authority to place the burden for adequate quantification on the source owner is an appropriate mechanism for ensuring that emissions are adequately quantified. This authority is discretionary, so that if the enforcement authority believes that the excluded compounds are being adequately quantified or wants to quantify the excluded compounds itself, the authority need not be exercised.

Comment: The definition need not require that a test method for excluding negligibly-reactive compounds be submitted as a SIP revision because, among other reasons, it is unnecessary for issuing new source permits and operating permits. Instead, the definition could indicate that EPA will not be bound by a State determination if the determination has not been approved as part of the SIP.

Response: The EPA agrees with this suggestion and has modified the definition to indicate that EPA will not be bound by a State determination unless it is reflected in the applicable EPA-approved SIP, a construction permit issued pursuant to a new source review program approved or promulgated under title I of the Act, an operating permit issued pursuant to a program approved or promulgated under title V, or under other regulations adopted by EPA pursuant to the Act (e.g., 40 CFR part 60, New Source Performance Standards).

Comment: One commenter noted that the proposed definition contained some confusion about the roles of the source owner, the Administrator, and the State in excluding compounds for compliance determinations, including requiring and approving monitoring data for such purposes.

Response: The EPA agrees with this comment and has revised the definition of VOC's so as not to limit who may exclude, for the purpose of determining compliance, compounds EPA has determined to be negligibly reactive. Also, the authority to require and approve monitoring data for determining the amount of negligibly-reactive compounds is left to the "enforcement authority." The roles of EPA and the State have been clarified in the change discussed immediately above which provides that (where the State is the enforcement authority) EPA will not be bound by a State determination regarding monitoring or test methods appropriate for determining compliance unless the method is reflected in one of the EPA-approved or promulgated provisions noted.

Comment: The definition should not indicate that VOC will be measured by the test method in the approved SIP because test methods in the SIP's vary.

Response: The EPA does not agree with this comment. The VOC definition should be implemented through the provisions in the approved SIP. In fact, this commenter's suggested language for the VOC definition continues to incorporate this provision. Finally, if EPA determines that a nationally-uniform test method is appropriate to implement a particular program, it can so specify at that time.

Final Action

Today's final action is based upon the material in Docket No. A–90–27 and EPA's review and consideration of all comments received during the public comment period. As provided in EPA's March 1991 proposal and as modified in response to comments described above, the new definition of VOC at 40 CFR 51.100(s) will now govern EPA's consideration of negligibly-reactive VOC's in ozone SIP's. Thus, EPA hereby

withdraws its prior policy statements regarding reactivity of VOC's in ozone SIP's as being moot. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, EPA will neither approve nor enforce measures controlling negligibly-reactive compounds as part of a federally-approved ozone SIP. In addition, States should not include these compounds in their VOC emission inventories and may not take credit for controlling these compounds in their ozone control strategy. Further, negligibly-reactive compounds may not be used for emissions netting (see, e.g., 40 CFR 51.166(b)(2)(c)), offsetting (see 40 CFR appendix S), or trading with reactive VOC's (see Emission Trading Policy Statement, 51 FR 43814, December 4, 1986).

Pursuant to 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it relaxes current regulatory requirements rather than imposing new ones. This final rule was submitted to the Office of Management and Budget (OMB) as required by Executive Order (E.O.) 12291. The E.O. 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the E.O. and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis in connection with every major rule. Because this rule relaxes regulatory requirements, it is not "major" within the meaning of E.O. 12291. Drafts submitted to OMB for review, any written comments from OMB or other agencies, and any EPA written responses to those comments are included in the Docket. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This notice has no Federalism implications under E.O. 12612 since it imposes no new requirements on States or sources. Instead, it provides additional flexibility to States to exempt certain compounds from ozone SIP control programs and provides similar exemptions involving FIP and Federal NSR rules.

Assuming this rulemaking is subject to section 317 of the Act, the Administrator concludes, weighing the Agency's limited resources and other duties, that it is not practicable to conduct an extensive economic impact assessment of today's action since the rule promulgated today will relax current regulatory requirements. Accordingly, the Administrator simply notes that any costs of complying with today's action, any inflationary or recessionary effects of the regulation, and any impact on the competitive standing of small businesses, on consumer costs, or on energy use will be less than or at least not more than the impact that existed before today's action.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 21, 1992.

William K. Reilly,

Administrator.

For reasons set forth in the preamble, parts 51 and 52 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: Sections 101(b) (1), 110, 160–169, 171–178, 301(a) and 501–507 of the Clean Air Act, 42 U.S.C. 7401(b) (1), 7410, 7470–7479, 7501–7508, 7601(a), and 7661–7661f.

2. Section 51.100 is amended by adding paragraph (s) to read as follows:

§ 51.100 Definitions.

* * * * *

(s) *Volatile organic compounds (VOC)* means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1–trichloroethane (methyl chloroform); 1,1,1–trichloro–2,2,2–trifluoroethane (CFC–113); trichlorofluoromethane (CFC–11); dichlorodifluoromethane (CFC–12); chlorodifluoromethane (CFC–22); trifluoromethane (FC–23); 1,2–dichloro 1,1,2,2–tetrafluoroethane (CFC–114); chloropentafluoroethane (CFC–115); 1,1,1–trifluoro 2,2–dichloroethane (HCFC–123); 1,1,1,2–tetrafluoroethane (HFC–134a); 1,1–dichloro 1–fluoroethane (HCFC–141b); 1–chloro 1,1–difluoroethane (HCFC–142b); 2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124); pentafluoroethane (HFC–125); 1,1,2,2–tetrafluoroethane (HFC–134); 1,1,1–trifluoroethane (HFC–143a);1,1–difluoroethane (HFC–152a); and perfluorocarbon compounds which fall into these classes:

(i) Cyclic, branched, or linear, completely fluorinated alkanes;

(ii) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(iii) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(2) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved State implementation plan (SIP) or 40 CFR part 60, appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibility-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the enforcement authority.

(3) As a precondition to excluding these compounds as VOC or at any time thereafter, the enforcement authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the enforcement authority, the amount of negligibly-reactive compounds in the source's emissions.

(4) For purposes of Federal enforcement for a specific source, the EPA shall use the test methods specified in the applicable EPA-approved SIP, in a permit issued pursuant to a program approved or promulgated under title V of the Act, or under 40 CFR part 51, subpart I or appendix S, or under 40 CFR parts 52 or 60. The EPA shall not be bound by any State determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the above provisions.

* * * * *

3. Section 51.165 is amended by revising paragraph (a) (1) (xix) to read as follows:

§ 51.165 Permit requirements.

(a) * * *

(1) * * *

(xix) *Volatile organic compounds (VOC)* is as defined in § 51.100(s) of this part.

* * * * *

4. Section 51.166 is amended by revising paragraph (b) (29) to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(29) *Volatile organic compounds (VOC)* is as defined in § 51.100(s) of this part.

* * * * *

5. Appendix S to part 51 is amended by revising paragraph II.A.20 to read as follows:

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

20. *Volatile organic compounds (VOC)* is as defined in §51.100(s) of this part.

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by revising paragraph (b)(30) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(30) *Volatile organic compounds (VOC)* is as defined in § 51.100(s) of this chapter.

* * * * *

3. Section 52.24 is amended by revising paragraph (f)(18) to read as follows:

§ 52.24 Statutory restriction on new sources.

* * * * *

(f) * * *

(18) *Volatile organic compounds (VOC)* is as defined in §51.100(s) of this chapter.

* * * * *

3. Subpart O—Illinois, § 52.741 is amended by revising the definition of "volatile organic material (VOM) or volatile organic compound (VOC)," in paragraph (a)(3) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, Dupage, Kane, Lake, McHenry and Will Counties.

(a) * * *

(3) * * *

Volatile organic material (VOM) or volatile organic compounds (VOC) is as defined in § 51.100(s) of this chapter.

* * * * *

[FR Doc. 92–2035 Filed 1–31–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[ME–2–2–5250; A–1–FRL–4095–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Revised VOC Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Maine. These revisions correct deficiencies in the State's volatile organic compound (VOC) regulations in response to EPA's May 25, 1988 Ozone SIP call. The intended effect of this action is to approve of revisions to Maine's SIP which incorporate the current federal reasonably available control technology (RACT) requirements for VOC. These RACT corrections are a requirement of the Clean Air Act Amendments of 1990 (Section 182(a)(2)(A)). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on March 4, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne Arnold, (617) 565–3166; FTS 835–3166.

SUPPLEMENTARY INFORMATION: On September 29, 1989 and December 5, 1989, the Maine Department of Environmental Protection (DEP) submitted revisions to its SIP. These revisions correct deficiencies in Maine's VOC regulations. On September 24, 1990 (55 FR 39017), EPA published a Notice of Proposed Rulemaking (NPR) which proposed approval but which outlined amendments necessary prior to final rulemaking. On June 5, 1991, Maine DEP resubmitted revisions to its SIP which incorporated the amendments outlined in EPA's NPR. No public comments were received on the NPR.

Background

Based on monitored ozone exceedances in Maine, EPA sent letters to the Governor of Maine on May 25, 1988 and November 8, 1988 informing him that the Maine SIP was substantially inadequate to achieve the national ambient air quality standard (NAAQS) for ozone in parts of Maine pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act. EPA requested that the State respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call was meant to consist of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to but never adopted, and (3) updating the area's base year emission inventory.

On June 16, 1988, EPA sent a SIP call follow-up letter to the Maine DEP identifying specific technical inadequacies and inconsistencies in Maine's VOC regulations as compared to EPA national guidance. In response, on September 29, 1989 and December 5, 1989, Maine DEP submitted revisions to its SIP. On September 24, 1990 (55 FR 39017), EPA proposed approval of Maine's SIP revisions. EPA based this proposed approval on a determination that the submittal addressed the deficiencies identified in the SIP call.

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. Sections 7401–7671q). In section 182(a)(2)(A) of the amended Act, Congress codified the requirement that states revise their SIPS for ozone nonattainment areas so that they conform with EPA's pre-amendment guidance. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement of section 182(a)(2)(A). Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as that

requirement was interpreted in pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. Maine has areas classified as marginal or above and those areas are covered in the SIP. Therefore, it must address the RACT fix-up requirement.

Maine's Revisions

In response to the first phase of EPA's SIP call and EPA's follow-up letter, Maine adopted revisions on August 10, 1988 and September 27, 1989 to its two existing VOC regulations: Chapter 111 "Petroleum Liquid Storage Vapor Control," and Chapter 112 "Petroleum Liquid Transfer Vapor Recovery." The Maine DEP also amended its definition of VOC in Chapter 100 "Definitions." EPA is approving this definition in the final rulemaking notice on Maine's New Source Review and Related Revisions which is a separate action. In addition, Maine adopted a new "Paper Coater Regulation." This regulation supersedes three source-specific licenses which were incorporated into the SIP. The State officially requested to withdraw from the Maine SIP three source-specific licenses for the following paper coating sources: S.D. Warren of Westbrook, Eastern Fine Paper of Brewer, and Pioneer Plastics of Auburn. The September 24, 1990 (55 FR 39017) NPR summarizes the above changes in Maine's regulations.

EPA proposed to approve these revisions with the understanding that prior to final rulemaking the Maine DEP would make the necessary amendments to chapter 112 as outlined in the NPR. On May 22, 1991 Maine adopted the revisions to chapter 112 in accordance with amendments listed in the NPR. The necessary amendments and Maine's response are discussed below. Maine's regulations and EPA's evaluation are detailed in a memorandum dated November 12, 1991 entitled "Technical Support Document-Revised Maine VOC Regulations."

Amendments to Chapter 112

The definition of tank truck in chapter 112 includes an exemption for trucks with capacities of less than or equal to 3500 gallons. The Maine DEP stated that less than one percent of the total gasoline throughput in Maine is transferred by these "small capacity" tank trucks which the regulation exempts from control requirements. Therefore, the NPR stated that Maine DEP must justify this cut-off with a 5 percent demonstration.[2] In a letter dated October 23, 1990, EPA provided the Maine DEP with guidelines for this 5 percent demonstration in accordance with the EPA document "Issues Relating to VOC Regulations, Cutpoints, Deficiencies, and Deviations" (May 25, 1988). These guidelines included a calculation which resulted in the requirement that, in order to satisfy the 5 percent demonstration, no more than 0.8 percent of total gas throughput in Maine may be transported by the exempted tank trucks. In response, Maine DEP conducted a study of bulk gasoline terminal facilities in December 1990. These facilities kept a log of all exempted tank trucks that loaded gasoline at their plant. This survey documented that only 0.45 percent of Maine's total gasoline throughput is transported in exempted tank trucks, thus meeting the 5 percent demonstration requirement. However, it should be noted that, although this demonstration is sufficient to justify the 3500 gallon cut-off in Chapter 112 for purposes of responding to EPA's May 25, 1988 ozone SIP call, Maine may have to re-evaluate this cut-off and its effect throughout the entire gasoline marketing chain when they submit all of the control techniques guideline (CTG) regulations for approval into their SIP as required by the Clean Air Act Amendments of 1990. The demonstration may then result in a lower percentage of throughput allowed to the small trucks because of the various emission factors and their interdependency.

In addition, the NPR stated that Maine must amend its definition of tank truck to clarify that the 3500 gallon capacity cut-off applies to the total capacity of the tank truck or trailer including all of the compartments. Maine DEP amended the definition so that the 3500 gallon capacity cut-off includes all of the compartments.

Finally, the NPR required Maine to clarify the applicability of chapter 112. This regulation applied only to sources in existence prior to December 31, 1978, and did not apply to sources which have been constructed after that date. The new source performance standard (NSPS) for bulk gasoline terminals (40 CFR part 60, subpart XX) is applicable to sources which were constructed or modified after December 17, 1980. The NSPS for bulk gasoline terminals is as stringent as the RACT requirements for bulk gasoline terminals. However, sources which were constructed in the State of Maine after December 31, 1978 but before December 17, 1980 were not required to comply with RACT or the NSPS. In response to EPA's comments, Maine DEP removed the December, 1978 date. The regulation now requires all bulk gasoline terminals that have a daily throughput of gasoline of 20,000 gallons or more to install a vapor control system.[3]

Final Action

EPA is approving revisions to Chapter 111 "Petroleum Liquid Storage Vapor Control," Chapter 112 "Petroleum Liquid Transfer Vapor Recovery," and a new regulation Chapter 123 "Paper Coater Regulation," as a revision to the Maine SIP. In addition, EPA is withdrawing from the Maine SIP three source-specific licenses for the following paper coating sources: S.D. Warren of Westbrook, Eastern Fine Paper of Brewer, and Pioneer Plastics of Auburn. Today's action makes final the action proposed on September 24, 1990 (54 FR 39017). EPA received no adverse public comment on the proposed action. As a result, the Regional Administrator has reclassified this action from Table 1 to Table 2 under the processing procedures established on January 19, 1989 (54 FR 2214).

In addition, although this submittal preceded the date of enactment of the Clean Air Act Amendments of 1990, EPA is approving the submittal as fulfilling part of the requirements of section 182(a)(2)(a) of the amended Act. Maine's revised regulations, although submitted in response to the SIP call letter, also fulfill part of the RACT fix-up requirement.

Because EPA proposed approval of this submittal prior to enactment, EPA did not propose approval based on the requirements of new section 182(a)(2)(A). However, EPA believes that the good cause exception to notice-and-comment rulemaking applies and that the Agency, therefore, is not required to repropose approval of the submittal as meeting section

[1] Among other things, the pre-amendment guidance consists of the VOC RACT portions of the Post-87 policy, 52 FR 45044 (Nov. 24, 1981); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Bluebook) (notice of availability published in the **Federal Register** on May 25, 1988); and the existing CTGs.

[2] A 5 percent demonstration must prove that emissions from terminals as a result of Maine's regulation are within 5 percent of the emissions that would result if the terminals were subject to a regulation consistent with EPA requirements.

[3] The exemption for Searsport, Maine which was previously contained in chapter 112, approved on March 5, 1982 (47 FR 9462) and incorporated by reference at 40 CFR 52.1020(c)(16), has been removed from chapter 112, and the scope of the regulation has been expanded to include the entire state of Maine.

182(a)(2)(A). The Agency's action on a SIP or SIP elements is rulemaking that is subject to the procedural requirements of the Administrative Procedures Act (APA). Section 553(a)(B) of the APA provides that the Agency need not provide notice and an opportunity for comment if the Agency for good cause determines that notice and comment are "impracticable, unnecessary, or contrary to the public interest."

Notice and comment are impracticable and unnecessary in the present circumstance. Section 182(a)(2)(A) does not impose new requirements on the subject nonattainment areas. Rather, section 182(a)(2)(A) codifies the corrections nonattainment areas needed to make subject to the EPA SIP call letters issued in 1987 and 1988. Because the Maine SIP submittal meets the SIP call and, therefore, is consistent with the applicable pre-amendment guidance, EPA believes that the submittal also necessarily meets the requirements of section 182(a)(2)(A) of the amended Act. In EPA's earlier proposed approval of the Maine SIP, EPA provided notice and an opportunity for comment on the consistency of the state's rules with EPA's pre-enactment guidance. Since notice and an opportunity for comment have been provided on that set of issues, and section 182(a)(2)(A) does not expand those requirements, it is unnecessary to repeat that process. In addition, it is impracticable for the Agency to take such action because, in light of the statutory time constraints on acting on SIPs, such a process would divert valuable agency resources from action on the large number of SIPs addressing new substantive requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 10, 1992.

Julie Belaga,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(30) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(30) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on September 29, 1989, December 5, 1989 and June 3, 1991.

(i) Incorporation by reference.

(A) Letters from the Maine Department of Environmental Protection dated September 29, 1989, and June 3, 1991 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 111 "Petroleum Liquid Storage Vapor Control" and Chapter 123 "Paper Coater Regulation," effective in the state of Maine on October 3, 1989.

(C) Chapter 112 "Petroleum Liquid Transfer Vapor Recovery," effective in the State of Maine on June 9, 1991.

(ii) Additional materials.

(A) Letter from the Maine Department of Environmental Protection dated June 3, 1991 documenting the December 1990 survey conducted to satisfy the 5 percent demonstration requirement in order to justify the 3500 gallon capacity cut-off in chapter 112.

(B) Letter from the Maine Department of Environmental Protection dated December 5, 1989 requesting the withdrawal of operating permits for S.D. Warren of Westbrook, Eastern Fine Paper of Brewer, and Pioneer Plastics of Auburn incorporated by reference at 40 CFR 52.1020 (c)(11) and (c)(18).

(C) Nonregulatory portions of the submittal.

3. In § 52.1031 the table is amended by adding new entrys to State citations "111" and "112" and by adding a new State citation "123" to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
111	Petroleum Liquid Storage Vapor Control.	09/27/89	Feb. 3, 1992	[*FR* citation from published date].	(c)(30)	
*	*	*	*	*	*	*
112	Petroleum Liquid Transfer Vapor Recovery.	05/22/91	Feb. 3, 1992	[*FR* citation from published date].	(c)(30)	The exemption for Irving Oil Corporation in Searsport, Maine incorporated by reference at 40 CFR 52.1020(c)(16) is removed.

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
123	Paper Coater Regulation	09/27/89	Feb. 3, 1992	[*FR* citation from published date].	(c)(30)	The operating permits for S.D. Warren of Westbrook, Eastern Fine Paper of Brewer, and Pioneer Plastics of Auburn incorporated by reference at 40 CFR § 52.1020 (c)(11), (c)(11), and (c)(18), respectively, are withdrawn.

[FR Doc. 92-2515 Filed 1-31-92; 8:45 am]
BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amendment E-270]

Procurement Leadtimes

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation removes the procurement leadtime table from the Federal Property Management Regulations. This action is appropriate because the table is informational rather than regulatory and the table is also illustrated in the GSA publication, FEDSTRIP Operating Guide. This action will eliminate duplicate illustration of the table.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Teresa Sorrenti, Deputy Director, Systems, Inventory, and Operations Management Center (703-305-6514).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-26

Government property management.

For the reasons set forth in the preamble, 41 CFR part 101-26 is amended as follows:

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

1. The authority citation for part 101-26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 101-26.1—General

2. Section 101-26.102-3 is amended by revising the introductory paragraph and paragraph (b) and (c) to read as follows:

§ 101-26.102-3 Procurement leadtime.

When GSA performs the purchasing services for other agencies or activities as contemplated by this § 101-26.102-3, calculation of the delivery dates required for the items involved must be based on the procurement leadtimes illustrated in the GSA publication, FEDSTRIP Operating Guide. These leadtimes are based on the normal time required after receipt of agency requisitions by GSA to effect delivery to destinations within the 50 States.

* * * * *

(b) If unusually large quantities or complex items are required, leadtime adjustments should be made to reflect the specfic requirement. As an example, standard furniture items can usually be delivered in less than 90 days after receipt of the requisition. However, for large quantity or complex orders requiring a definite quantity procurement, delivery times may range from 4 to 6 months. Footnotes relating to classes where this is a frequent occurence are shown in the procurement leadtime table illustrated in the FEDSTRIP Operating Guide.

(c) The procurement leadtime table illustrated in the FEDSTRIP Operating Guide does not apply to public exigency or other high priority requisitions; however, it should be used as a guide to establish realistic required delivery dates for such requisitions.

3. Section 101-26.104 is amended by revising paragraph (b) to read as follows:

§ 101-26.104 End-of-year submission of requisitions for action by GSA.

* * * * *

(b) Under the FEDSTRIP/MILSTRIP systems, the requisitions submitted to GSA are not required to reflect the applicable appropriation or fiscal year funds to be charged. The fund code entry on the requisition simply indicates to the supply source (GSA) that funds are available to pay the charge, thereby providing authority for the release of material and subsequent billing. Requisitions received by GSA in purchase authority format are normally converted to FEDSTRIP/MILSTRIP documentation so that processing can be accomplished expeditiously through a uniform system based on the use of automated equipment. Accordingly, primary responsibility rests with the ordering activity for ensuring that requisitions intended to be chargeable to appropriations expiring the last day of the fiscal year are submitted in sufficient time for GSA to consummate the necessary action before the end of the fiscal year. Requisitions submitted on or before the last day of the fiscal year may be chargeable to appropriations expiring on that date provided the ordering agency is required by law or GSA regulation to use GSA supply sources. When the ordering agency is not required to use GSA sources, requisitions for GSA stock items may be recorded as obligations provided the items are intended to meet a bona fide need of the fiscal year in which the need arises or to replace stock used in that fiscal year; requests for other than GSA stock items are to be recorded as obligations at the time GSA awards a contract for the required items. In the latter case, GSA procurement leadtimes illustrated in the GSA publication, FEDSTRIP Operating Guide, should be used as a guide for timely submission of these requisitions. The leadtimes referred to relate to the

number of days between submission of a requisition and actual delivery of the items involved. While this may furnish some guidance to requisitioners, there is no direct relationship between those leadtimes and the time it takes for GSA to make an award of a contract.

* * * * *

Subpart 101-26.48 (§§ 101-26.4800-101-26.4801)—[Removed]

4. Subpart 101-26.48 is removed and reserved.

Dated: January 16, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-2449 Filed 1-31-92; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580, 581 and 583

[Docket No. 91-1]

Bonding of Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Reconsideration of final rule.

SUMMARY: On October 8, 1991, the Federal Maritime Commission adopted a final rule implementing the Non-Vessel-Operating Common Carrier Amendments of 1990. Subsequently, the Commission received a Petition for Stay and Reconsideration or Clarification of the Final Rule from a conference of ocean common carriers and three individual vessel-operating common carriers. Upon reconsideration, the Commission has clarified its procedures for issuance of its list of NVOCCs in compliance with the 1990 Amendments and further clarified that common carriers can rely on an NVOCC's Tariff Rule No. 24 for a period of six months.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT:

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street NW., Suite 10220, Washington, DC 20573, (202) 523-5796

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Suite 12225, Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: On October 8, 1991, the Commission adopted a final rule to implement the Non-Vessel-Operating Common Carrier ("NVOCC") Amendments of 1990 ("1990 Amendments"), 56 FR 51987, October 17, 1991. The rule became effective 30 days after publication in the **Federal Register**, *i.e.*, on November 18, 1991. The Commission now has before it a Petition for Stay and Reconsideration or Clarification of the Final Rule ("Petition") filed by the Inter-American Freight Conference, Bermuda Container Line Ltd., Great White Fleet Ltd., and Transportacion Maritima Mexicana, S.A. de C.V. ("Petitioners"). A reply to the Petition was received from the Pacific Merchant Shipping Association ("PMSA").

The Petition

Petitioners raise concerns with two parallel provisions of the final rule—§§ 583.7(b) and 581.11(b). First, they note that the Supplementary Information to the final rule indicates that § 583.7(b)(1) permits carriers to consult and rely on a list of tariffed and bonded NVOCCs provided by the Commission and that such a list will be updated "periodically." Petitioners are concerned that there may be delays in the distribution and receipt of the lists and, therefore, suggest that a period of effectiveness be designated on each list. They also urge that new lists be issued sufficiently in advance of the expiration date of the current list so that there would be no hiatus between the effectiveness of each list and its successor. Reconsideration is said to be appropriate here because the provision relating to such lists appeared for the first time in the final rule.

Second, Petitioners state that, under § 583.7(b)(2) of the final rule, carriers would be required to review the Commission's tariff files at the time of every shipment in order to determine whether an NVOCC has a tariff on file with an appropriate Rule No. 24. They believe that neither the final rule nor the Supplementary Information indicates that a carrier may rely on a copy of Rule No. 24 provided by an NVOCC. Petitioners believe that because the Commission previously permitted a six-month period of reliance on NVOCC tariff rules, and given the lack of any clear statement on the subject in the final rule, that no such period of reliance is permitted under the final rule.

Petitioners further argue that reconsideration is the more appropriate remedy because it could result in changes to the text of the final rule. A less preferable, but seemingly acceptable, remedy would, in their opinion, be an order of clarification. Lastly, in order to permit comment on their Petition, Petitioners suggest that the Final Rule be stayed.

Reply to Petition

Only one reply was received in response to the Petition. The Pacific Merchant Shipping Association, representing 45 ocean carriers on the West Coast, supports the Petition. PMSA likewise contends that an expiration date on the Commission's list of complying NVOCCs is necessary to eliminate confusion and that carriers should be permitted to consult a copy of an NVOCC's Tariff Rule No. 24. PMSA claims that, if carriers must verify every shipment of a particular NVOCC, they will be subject to an unreasonable burden.

Discussion

As an initial matter, Petitioners' request for a stay of the Final Rule has been mooted. Petitioners filed their Petition on November 12, 1991, six days before the final rule was to become effective. Given the time period for replies to petitions, the Commission was not in a position to address the merits of the stay request until after the final rule had actually gone into effect. *See* 46 CFR 502.262. In any event, we do not believe that a stay would have been appropriate under the circumstances.

Petitioners' concern about their perceived inability to consult a copy of an NVOCC's Tariff Rule No. 24 is unwarranted. There is nothing in the language of the final rule that requires a common carrier seeking to confirm an NVOCC's compliance to review that NVOCC's tariff on file with the Commission. To the contrary, § 583.7(b)(1) specifically states that a carrier can obtain proof of compliance by "* * * reviewing a *copy of the tariff rule* published by the NVOCC * * *." (Emphasis supplied). A common carrier is not required to consult the original NVOCC tariff on file with the Commission, but rather can rely upon any type of copy provided by the NVOCC. A carrier relying on such a copy of an NVOCC's Rule No. 24 will, therefore, be protected from any liability under section 10(b)(14) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(14).

Petitioners' other concerns about the Commission's list of complying NVOCCs, its period of effectiveness, and the lack of advance notice of its effectiveness, will be alleviated by the procedure recently adopted by the Bureau of Tariffs, Certification and Licensing ("BTCL") to implement the final rule. On November 18, 1991, BTCL published its initial lists of NVOCCs in "substantial compliance." This list was made retroactive to November 4, 1991, and contains the words "effective until superseded" on its cover. The Commission provided 103 copies of the list to requestors. In addition, BTCL published an Information Bulletin to

apprise the industry of the availability of the list. In the future, the Commission intends to publish advance notice of the availability of superseding lists of complying NVOCCs. Such notice will be published in the **Federal Register**, and the list itself will not become effective until five days after this notice. In an effort to apprise everyone in the ocean transportation industry of new lists of complying NVOCCs, the Commission will also publish an information bulletin that will be available to the trade press.

The Commission recognizes that under the Interim Rule, ocean common carriers or conferences were required to obtain documentation that a known NVOCC was tariffed and bonded. The Supplementary Information to the Interim Rule merely indicated that carriers could require "periodic resubmissions" of such documentation and the Commission, by order of clarification, later interpreted "periodic resubmission" to mean every six months. The final rule now requires common carriers to obtain proof of a known NVOCC compliance. However, the final rule and Supplementary Information did not expressly indicate how often a carrier must obtain proof of compliance for a particular NVOCC. It was our intention to continue the six-month policy. Therefore, if a carrier is relying on an NVOCC's Tariff Rule No. 24, it will be able to do so for a period of six months. This will avoid an excessive duplication of effort and is consistent with our prior practice under the interim rule. However, if a carrier is relying on the Commission's list of complying NVOCCs, it can do so only until such time as that list is superseded pursuant to the procedure described above.

The Commission does not believe that any modifications to the final rule are necessary based on the above discussion. The changes in Commission procedure, together with our clarification of the amount of time within which a carrier can rely on an NVOCC's Rule No. 24, should alleviate any problems carriers are actually experiencing with the final rule.

Therefore, it is ordered, that the "Petition for Stay and Reconsideration or Clarification" submitted by the Inter-American Freight Conference, Bermuda Container Line Ltd., Great White Fleet Ltd., and Transportation Maritima Mexicana, S.A. de C.V. is granted to the extent indicated above.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-2489 Filed 1-31-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-317; RM-7854]

Radio Broadcasting Services; Marshall, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 298C3 for Channel 296A at Marshall, Minnesota, and modifies the license for Station KBJJ(FM) to specify operation on the higher class channel, in response to a petition filed by Paradis Broadcasting of Marshall, Inc. See 56 FR 57607, November 13, 1991. The coordinates for Channel 298C3 at Marshall are 44-24-37 and 95-51-43. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 13, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91-317, adopted January 15, 1992, and released January 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 296A and adding Channel 298C3 at Marshall.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau

[FR Doc. 92-2553 Filed 1-31-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-233; RM-7743]

Radio Broadcasting Services; Armijo, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission substitutes Channel 296C for Channel 296C2 at Armijo, New Mexico, and modifies the license for Station KUCU(FM) (formerly KMYI) to specify operation on the higher class channel. See 56 FR 40844, August 16 1991. Channel 296C is allotted at Armijo in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.3 kilometers (29.4 miles) southeast to avoid short spacings to Stations KBOM(FM), Channel 294C1, Los Alamos, New Mexico, and KHFM(FM), Channel 242C, Albuquerque, New Mexico. The coordinates for Channel 296C are North Latitude 34-41-46 and West Longitude 106-24-17. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 13, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-233, adopted January 21, 1992, and released January 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 296C2 and adding Channel 296C at Armijo.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2552 Filed 1-31-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-299; RM-6696, RM-6961]

Radio Broadcasting Services; Lopez and Dushore, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The commission grants in part and otherwise denies a Petition for Reconsideration filed by Stewart C. West of the Report and Order in this proceeding. See 55 FR 12870, April 6, 1990. While the petitioner was allowed to cure its failure to submit a certificate of service of his counterproposal, the petitioner has not provided a statement of continuing interest in the allotment of Channel 233A to Dushore. Therefore, no allotment to that community can be made. With this action, the proceeding is terminated.

EFFECTIVE DATE: March 13, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 89-299, adopted January 21, 1992, and released January 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commissions's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2554 Filed 1-31-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-257; RM-6299, RM-6506]

Radio Broadcasting Services; Kingsville and Ingleside, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Riviera Broadcasting Company, licensee of Station KNGV(FM) [formerly Station KODK(FM)], Channel 224A, Kingsville, Texas, substitutes Channel 224C2 for Channel 224A at Kingsville, Texas, and modifies KNGV(FM)'s license to specify operation on the higher powered channel. At the request of Roy E. Henderson, d/b/a Spanish Aural Services Company, the Commission allots Channel 297A to Ingleside, Texas, as the community first local FM service. See 53 FR 22548, June 16, 1988, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 13, 1992. The window period for filing applications for Ingleside, Texas, will open on March 16, 1992, and close on April 15, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-257, adopted January 21, 1992, and released January 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

Channel 297A and Channel 224C2 can be allotted to Ingleside and Kingsville, Texas, respectively, in compliance with the Commission's minimum distance separation requirements. Channel 297A can be allotted to Ingleside without the imposition of a site restriction. The coordinates for Channel 297A at Ingleside are North Latitude 27-52-54 and West Longitude 97-12-42. Channel 224C2 can be allotted to Kingsville with a site restriction of 28.2 kilometers (17.5 miles) east to avoid a short-spacing conflict with Station KQNN(FM), Channel 221A, Alice, Texas. The coordinates for Channel 224C2 at Kingsville are North Latitude 27-33-00 and West Longitude 97-35-00. Since Ingleside and Kingsville are located within 320 kilometers (199 miles) of the Mexican border, concurrence of the Mexican government has been obtained for these allotments. Furthermore, because the proposed transmitter site for Station KNGV(FM) is located within 80 kilometers of the Federal Communications Commission's monitoring station at Kingsville, Texas, the licensee should refer to the provisions of § 73.1030(c)(1)-(5) of the Rules governing protection of Federal Communications Monitoring Stations when filing its application.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 224A and adding Channel 224C2 at Kingsville, and by adding 297A, Ingleside.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2555 Filed 1-31-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 911172-2021]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of initial specification of groundfish for 1992; notice of fishery closure; and request for comment.

SUMMARY: NMFS announces final specifications of total allowable catches (TACs) and initial apportionments for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area during the 1992 fishing year and associated management measures. This action is necessary to establish harvest limits for groundfish during the 1992 fishing year and associated management

measures. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

DATES: Effective at 0001 Alaska local time (A.l.t.) on January 1, 1992, through 2400 A.l.t., on December 31, 1992, or until changed by subsequent notice in the **Federal Register.**

ADDRESSES: Comments on directed fishing closures should be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668. The final Environmental Assessment prepared for the 1992 TAC specifications may be obtained from the same address, or by calling 907–586–7230. The final Stock Assessment and Fishery Evaluation (SAFE) report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Biologist, Alaska Region, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations (50 CFR 611.93 and 675) that implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to specify annually the TAC, initial domestic annual harvest (DAH), and initial total allowable level of foreign fishing (TALFF) for each target species and the "other species" category for the succeeding fishing year (§ 675.20(a)(7)). The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). For 1992, the sum of TACs is equal to 1,999,855 mt, as indicated in Table 1.

TABLE 1.—OVERFISHING LEVELS, FINAL 1992 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND ITAC APPORTIONMENTS OF GROUNDFISH IN THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) MANAGEMENT AREA [1, 2]

Species and area	Overfishing level	ABC	TAC	ITAC=DAP [3, 4]
Pollock:				
BS [5]	1,770,000	1,490,000	1,300,000	1,105,000
AI	62,400	51,600	51,600	43,860
BD [6]	25,000	25,000	1,000	850
Pacific cod	188,000	182,000	182,000	154,700
Yellowfin sole	452,000	372,000	235,000	199,750
Greenland turbot	34,600	7,000	7,000	5,950
Arrowtooth flounder	114,000	82,300	10,000	8,500
Rock sole	260,800	260,800	40,000	34,000
Other flatfish	289,000	199,600	79,000	67,150
Sablefish:				
BS	1,840	1,400	1,400	1,190
AI	4,030	3,000	3,000	2,550
Pacific ocean perch:				
BS	3,540	3,540	3,540	3,009
AI	11,700	11,700	11,700	9,945
Other red rockfish [7]—BS	1,400	1,400	1,400	1,190
Sharpchin/Northern—AI	5,670	5,670	5,670	4,820
Shortraker/rougheye—AI	1,220	1,220	1,220	1,037
Other rockfish [8]:				
BS	400	400	400	340
AI	925	925	925	786
Atka mackerel	435,000	43,000	43,000	36,550
Squid	3,600	3,600	2,000	1,700
Other species [9]	27,200	27,200	20,000	17,000
Total	3,692,325	2,773,355	1,999,855	1,699,877

[1] Amounts are in metric tons: apply to entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified.
[2] Zero amounts of groundfish are specified for Joint Venture Processing (JVP) and Total Allowable Level of Foreign Fishing (TALFF).
[3] Initial TAC (ITAC)=0.85 of TAC; initial reserve=TAC−ITAC=299,978.
[4] DAP=domestic annual processing=ITAC.
[5] Amounts of pollock ITAC specified for the "A" and "B" seasons are 442,000 mt and 663,000 mt, respectively.
[6] Bogoslof District (BD) subarea proposed under Amendment 17 to the FMP.
[7] "Other red rockfish" includes shortraker, rougheye, northern and sharpchin.
[8] "Other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific Ocean perch and the "other red rockfish" species.
[9] "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.

A notice specifying proposed initial TAC, reserve, DAH, and TALFF amounts for the 1992 fishing year was published on November 20, 1991 (56 FR 58531). Comments were invited through December 16, 1991. No written comments were received. In addition, oral comments were heard, and public consultation with the Council occurred, during the Council meeting in Anchorage, Alaska, on December 3–9, 1991. Council recommendations and biological and economic data that were available at the Council's December meeting were considered in implementing these final 1992 specifications.

The specified TACs for each species are based on the best available biological and socioeconomic information. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), at their September and December 1991 meetings, reviewed current biological information about condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the SAFE report for the BSAI groundfish fisheries in the 1992 fishing year. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species'

biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1992 and other biological data from the September 1991 draft SAFE report were provided in the notice of proposed 1992 specifications (56 FR 58531; November 20, 1991). The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their September 1991 meetings. Based on the SSC's comments on technical methods, and new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report dated November 1991. The revised ABC recommendations were again reviewed by the SSC, AP, and Council at their December 1991, meetings. The SSC endorsed most of the Plan Team's recommendations for 1992 ABCs set forth in the final SAFE report. The SSC did recommend revisions to ABC amounts calculated for Aleutian Basin pollock, Pacific ocean perch, and Atka mackerel. A brief discussion of the SSC's revisions to the ABCs recommended by Plan Team follows:

Aleutian Basin (Bogoslof) Pollock

The SSC recommended that the projected estimate of 1992 exploitable biomass of Aleutian Basin pollock be based on a natural mortality rate (M) of .2, rather than .3 used by the Plan Team, for an increase in 1992 exploitable biomass from .444 million mt to .491 million mt. The SSC also recommended a more conservative exploitation rate of .25 times (M), or .05, compared to the Plan Team's recommended exploitation rate of .24. Using the SSC's exploitation rate against the revised estimate of exploitable biomass, the SSC's calculated recommendation for 1992 ABC is 25,000 mt.

Pacific Ocean Perch

The SSC recommended a more conservative exploitation rate for Pacific ocean perch relative to the rate used by the Plan Team. The SSC recommended that, as for other rockfish groups, an exploitation rate equal to natural mortality (M = 0.05) be used. Applying this rate to the current estimates of exploitable biomass in the Bering Sea and Aleutian Islands (70,800 mt and 234,000 mt) results in the SSC's recommended ABCs of 3,540 mt and 11,700 mt, respectively.

Atka Mackerel

Based on 1991 survey data, the SSC supports the Plan Team's procedure used to calculate an estimated 1992 ABC of 270,000 mt. This amount reflects an 11-fold increase of the ABC calculated for 1991 (24,000 mt). The SSC noted that the 1992 ABC calculated by the Plan Team is based on limited data. The SSC also heard testimony from NMFS that an abrupt increase in catch of Atka mackerel of the magnitude implied by the new ABC estimate would have uncertain effects on northern fur seals or other marine mammals, which feed heavily on Atka mackerel as they move through the Aleutian passes. In consideration of these concerns, the SSC recommended phasing in the Plan Team's estimate of ABC over a 6-year period and increasing the exploitation rate from M/6 in 1992 to M in 1997. Given this exploitation strategy, the SSC's recommended ABC for 1992 is 43,000 mt (.30/6)(870,000 mt exploitable biomass).

The Council adopted the SSC's recommendations for 1992 ABCs. The ABCs reflect harvest amounts that would not cause overfishing as defined in the FMP. The calculated levels of overfishing for each species category and recommended ABCs adopted by the Council are listed in Table 1.

The Council developed its TAC recommendations based on the final ABCs as adjusted for other biological and socioeconomic considerations. Each of the Council's recommended TACs for 1992 is equal to or less than the final ABC for each species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks. The Council also recommended division of certain TACs between seasons and gear types, as described below.

Apportionment of TAC

As required by §§ 675.20(a)(3) and 675.20(a)(7)(i), each species TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The initial TAC (ITAC) for each target species and the "other species" category at the beginning of the year, which is equal to 85 percent of TAC, is then apportioned between DAH and TALFF. Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The domestic annual processing (DAP) category includes U.S. vessels that process catch on board or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). Consistent with the final notice of 1991 initial specifications, the Council recommended that 1992 DAP specifications be set equal to TAC and that zero amounts of groundfish be allocated to JVP and TALFF. In making this recommendation, the Council considered the continued growth in DAP harvesting and processing capacity and anticipates that 1992 DAP operations will harvest the full TAC specified for each BSAI groundfish species category.

The final TACs, ITACs, and initial apportionments of groundfish in the BSAI area for 1992 are given in Table 1 of this notice.

Regulations under § 675.20(a)(7)(i) require one-fourth of each proposed ITAC and the proposed first seasonal allowance of pollock (discussed below) be in effect at the start of a fishing year on an interim basis and remain in effect until superseded by a final **Federal Register** notice of initial specifications. Hence, the groundfish harvest specifications in Table 1 of this notice supersede the interim 1992 specifications published in Table 1 of the notice of proposed specifications (56 FR 58531; November 20, 1991).

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the TAC of pollock for each subarea of the BSAI area is allocated between two seasons (i.e. the roe season, January 1 through April 15, and the non-roe season, June 1 through December 31). Furthermore, the division of pollock TAC into seasonal allowances occurs after subtraction of reserves as provided under § 675.20(a)(3).

When specifying seasonal allowances of the pollock TAC, the Council considered the following nine factors listed in the FMP:

1. Estimated monthly pollock catch and effort in prior years;

2. Expected changes in harvesting and processing capacity and associated pollock catch;

3. Current estimates of, and expected changes in, pollock biomass and stock conditions; conditions of marine mammal stocks, and biomass and stock conditions of species taken as bycatch in directed pollock fisheries;

4. Potential impacts of expected seasonal fishing for pollock on pollock

stocks, marine mammals, and stocks and species taken as bycatch in directed pollock fisheries;

5. The need to obtain fishery data during all or part of the fishing year;

6. Effects on operating costs and gross revenues;

7. The need to spread fishing effort over the year, minimize gear conflicts, and allow participation by various elements of the groundfish fleet and other fisheries;

8. Potential allocative effects among users and indirect effects on coastal communities; and

9. Other biological and socioeconomic information that affects the consistency of seasonal pollock harvests with the goals and objectives of the FMP.

Based on the above criteria, the Council recommended that the seasonal allowances of the pollock ITAC specified for the Bering Sea subarea be set at the same relative levels as in 1991, or 40 percent of the ITAC during the roe season (442,000 mt) and 60 percent during the non-roe season (663,000 mt). As in 1991, the Council also recommended that the entire pollock ITAC specified for the Aleutian Islands subarea (43,860 mt) be made available at the beginning of the fishing year.

TABLE 2.—ALLOCATION OF POLLOCK TAC (MT) BY SEASON

Subarea	TAC [1]	ITAC [2]	Roe season [3]	Nonroe season [4]
Bering Sea	1,300,000	1,105,000	442,000	663,000
Aleutian Islands	51,600	43,860	43,860	Remainder.
Bogoslof District [5]	1,000	850	850	Remainder.

[1] TAC = total allowable catch.
[2] Initial TAC (ITAC) = 0.85 of TAC; 0.15 of TAC is apportioned to reserve.
[3] January 1 through April 15.
[4] June 1 through December 31.
[5] Authorized under inseason adjustment to protect Bogoslof District pollock until the effective date of Secretarial action on Amendment 17 to the FMP.

The Council has adopted Amendment 17 to the FMP that would establish the Bogoslof District as a third subarea for purposes of pollock stock management. Pending Secretarial approval or disapproval of Amendment 17, the Council recommended that directed fishing for pollock in the Bogoslof District be prohibited and that a 1,000 mt pollock TAC be specified for the Bogoslof District for bycatch purposes only. As such, seasonal allowances of the Bogoslof District pollock TAC would serve no purpose. An inseason adjustment has been implemented to prohibit directed fishing for pollock in the Bogoslof District (57 FR 2688; January 23, 1992) until Secretarial review of Amendment 17 is completed.

In reviewing the Council's recommended seasonal allowance of the pollock ITAC in the Bering Sea and Aleutian Islands management areas, NMFS considered how the recommended allowances address the factors listed above and mitigate potential problems associated with the pollock roe fishery.

In the Bering Sea subarea, the recommended roe season allowance of the pollock ITAC will prevent an inappropriate or unintended allocation of the pollock TAC between seasons and among industry sectors by limiting the roe season harvest to 40 percent of the ITAC of pollock in the Bering Sea subarea. This recommendation is consistent with the proportion of the pollock ITAC that was actually harvested by DAH fisheries during the roe season, but without roe season constraints, during 1986–1990.

As the DAP fishing effort has grown, larger DAP pollock harvests have occurred earlier in the fishing year. Two reasons for larger harvests include (1) the high value of pollock roe relative to other pollock products, and (2) the common property nature of the pollock resource and an open access management regime that gives no incentive to delay harvesting. Hence, without a specific seasonal catch limit, the potential exists for a disproportionately large roe season harvest. In this event, those vessels and processors that have the capacity to catch and process roe-bearing pollock most rapidly would have a competitive advantage over those elements of the industry that conduct slower, more evenly paced operations.

NMFS finds that the seasonal allocation of the Bering Sea pollock ITAC prevents an inappropriate or unintended allocation of the pollock TAC between seasons and among industry sectors. Furthermore, the specific allowance of 442,000 mt and 663,000 mt between the roe and non-roe seasons, respectively, will provide a reasonable balance between roe and non-roe season harvests. The recommended roe season catch limit will allow production of valuable pollock products while preventing an excessively disproportionate harvest in the roe season.

NMFS also finds that the roe season catch limit may help to prevent adverse effects on the ecosystem and on future pollock productivity from intensive fishing mortality during the roe season. Although no clear evidence is available to demonstrate that intensive fishing during a compressed season will have significant negative impacts on the ecosystem, the actual effects of such fishing are uncertain. The complexity of the ecosystem can easily mask any statistical relationship between the abundance of pollock eggs and larvae, and the future abundance of various pollock predators (including the threatened Steller sea lion) and of harvestable stocks of pollock. Given this uncertainty, conservative limitation of the roe season pollock harvest to 442,000 mt is reasonable.

The Council made no recommendation to allocate pollock by season in the Aleutian Islands subarea. Therefore, the entire 43,860 mt of pollock ITAC specified for this subarea will be available for harvest during the roe season, and any amount unharvested on April 15 will be available for harvest during the non-roe season beginning June 1, subject to other harvesting limitations.

NMFS considered the Council's recommendation not to allocate seasonally the Aleutian Islands pollock TAC and whether the potential for concentrated fishing effort could temporarily disrupt foraging efficiency of Steller sea lions on pollock, an important prey species for these marine mammals. The possible adverse effect of concentrating fishing effort on foraging activity of sea lions has been addressed in the rule that implemented Amendment 20 to the BSAI FMP and Amendment 25 to the FMP for Groundfish of the Gulf of Alaska (57 FR 2683; January 23, 1992).

Under a separate rule published in the Federal Register on January 6, 1992 (57 FR 381), the 1992 groundfish trawl fisheries in the BSAI and Gulf of Alaska (GOA) were delayed until January 20, 1992 when sea lion protection measures authorized under Amendments 20 and 25 became effective. NMFS implemented the 1992 season delay to assure that when the groundfish trawl fisheries began, they would be prosecuted in a manner that minimized potential adverse effects of these operations on sea lion foraging activity in sensitive habitat areas. Sea lion protection measures implemented under Amendments 20 and 25 include closure of areas around specified sea lion rookeries to fishing with trawl gear, and spatial and temporal restrictions on pollock harvests in the Gulf of Alaska.

Available information indicates that actions taken to disperse the harvest of pollock in the Gulf of Alaska under Amendment 25 to the GOA FMP are not directly applicable to the Aleutian Islands subarea. This subarea is a unique biogeographic area, significantly different from the GOA, with a narrow continental shelf, rugged bottom topography, and swift currents in the passes between the islands. NMFS observer data indicate that in recent years, a significant portion of the Aleutian Islands pollock harvest has occurred within 10 nm of sea lion rookeries. Since 1988, between 26 and 96 percent of the annual pollock catch in the Aleutian Island subarea was harvested within these areas. NMFS observer data also indicate that most of the domestic harvest of other groundfish species, including Atka mackerel, Pacific cod, and rockfish, has also occurred within 10 nautical miles of sea lion rookery sites. In contrast, a lower percentage of the 1990 GOA groundfish harvest occurred within 10 nm of rookery sites.

The amount of groundfish harvested in the Aleutian Islands subarea within 10 nm of sea lion rookeries indicates that significant amounts of groundfish are available within these areas and that fishing operations could potentially compete with sea lions for available groundfish. In response to the concern that all trawl operations could have potentially adverse effects on Steller sea lion foraging efficiency in sensitive habitat areas in the Aleutian Islands subarea, as well as potentially adverse physical interactions with trawl gear in those areas, fishing with trawl gear was prohibited within either 10 or 20 nm around sea lion rookery sites in the Aleutian Islands subarea under regulations that implement Amendment 20.

These regulations, together with the assumed availability of groundfish within the closed areas around Steller sea lion rookery sites in the Aleutian Islands subarea, are expected to provide effective protection to Steller sea lions in the Aleutian Islands subarea. NMFS has determined that seasonal allocations of the Aleutian Island pollock TAC would not be expected to provide additional protection for sea lions that would be meaningful. NMFS also has determined that the Council's recommendation not to implement seasonal allocations of the pollock ITAC in the Aleutian Islands subarea is consistent with Council objectives with respect to harvesting roe-bearing pollock.

With respect to the Council recommendation for seasonal allocations of the pollock ITAC in the Bering Sea subarea (Table 2), NMFS concurs with the nine findings considered by the Council as required by the FMP in setting seasonal apportionment of the pollock ITACs. The record of these considerations is summarized at Agenda D-2(c) for the December 1991 meeting of the Council and in appendix B of the SAFE report dated November 1991. By basing these findings on the biological and socioeconomic information contained in the final SAFE report dated November 1991, NMFS finds that the recommended seasonal allowances of pollock are based on, and consistent with, the types of information required by § 675.20(a)(2)(ii).

NMFS intends to further explore the desirability of spatially and temporally dispersing groundfish harvests in the Aleutian Islands subarea to further protect Steller sea lions. Any such action would be developed in consultation with the Council and, pending approval by the Secretary, implemented by regulatory amendment under authority of Amendment 20 to the FMP.

Apportionment of Pollock TAC to the Non-pelagic Trawl Gear Fishery

Regulations under § 675.24(c)(2) authorize the Secretary, in consultation with the Council, to limit the amount of pollock TAC that may be taken in the directed fishery for pollock using non-pelagic trawl gear. This authority is intended to reduce the amount of halibut and crab bycatch that occurs in non-pelagic trawl operations. Limitations on the amount of pollock taken in the non-pelagic trawl fishery were not implemented in 1991 because the amount of pollock taken with non-pelagic trawl gear and the associated bycatch of crab and halibut were sufficiently low as to eliminate the need for further restriction under separate regulatory action. Through September 29, 1991, the amount of pollock taken with non-pelagic trawl gear was less than 6 percent of the total pollock harvest. Relatively small harvest amounts of pollock with non-pelagic trawl gear are again anticipated in 1992. As such, the Council recommended that no regulatory action be taken to further restrict the amount of pollock TAC harvested with non-pelagic trawl gear in 1992.

NMFS concurs with the Council's recommendation that restrictions on the amount of pollock harvested with non-pelagic trawl gear are unncessary to significantly reduce bycatch of prohibited species.

Sablefish Gear Allocation

Regulations at § 675.24(c)(1) require that sablefish TACs for the Bering Sea and Aleutian Islands subareas be divided between trawl and hook-and-line/pot gear fisheries. Gear allocations of TACs are specified in the following proportions:

Bering Sea subarea: Trawl gear—50 percent; hook-and-line/pot gear—50 percent, and

Aleutian Islands subarea: Trawl gear—25 percent; hook-and-line/pot gear—75 percent.

Based on the 1992 TAC specifications in Table 1, trawl gear and hook-and-line/pot allocations of sablefish in each subarea are equivalent to the TACs and ITACs listed in Table 3.

TABLE 3.—FINAL GEAR SHARES OF SABLEFISH TAC

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt) [1]
Bering Sea	Trawl	50	700	595
	Hook-and-line/pot gear	50	700	595

TABLE 3.—FINAL GEAR SHARES OF SABLEFISH TAC—Continued

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt) [1]
Aleutian Islands	Trawl	25	750	638
	Hook-and-line/pot gear	75	2,250	1,912

[1] Initial TAC (ITAC) = 0.85 of TAC, rounded to the nearest whole mt; 0.15 of TAC is apportioned to reserve. The sum of both ITAC gear shares in a subarea is equal to the ITAC for that subarea in Table 1.

Directed Fishing Closures

A principal consideration for the Council in developing its 1992 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY of two million mt. After consideration of the amounts of each species category TAC that is required for bycatch in other directed fisheries, the Council recommended that ABC amounts specified for Greenland turbot, "other rockfish," and the trawl allocation of sablefish TAC are not sufficient to support directed fisheries. As such, TAC amounts for these species were set equal to ABC, with Council intent that these amounts would be used for bycatch purposes only. The Council also recommended that the TAC specified for arrowtooth flounder be specified at a level that would support bycatch amounts of this species in other directed fisheries. Although the 1992 ABC calculated for arrowtooth flounder would support a larger TAC, arrowtooth flounder normally is retained only as a bycatch species, and significant target operations for this species do not yet exist.

Given the directed fishing standards for Greenland turbot, sablefish, and "other rockfish" under § 675.20(h), the Regional Director, Alaska Region, NMFS (Regional Director), has determined that the entire initial TACs for these species are needed to support incidental catch amounts in directed fisheries for other groundfish species. As such, the Regional Director concurs with the Council's recommendation that directed fishing for sablefish with trawl gear and directed fishing for Greenland turbot and "other rockfish" be prohibited to prevent the specified TACs from being exceeded. Attainment of the "other rockfish" TACs in the Bering Sea and Aleutian Islands are of special concern, because the specified TACs are set at the overfishing level. Attainment of these TACs would require the closure of all fisheries that catch incidental amounts of "other rockfish" and could result in the foregone harvest of significant amounts of other groundfish species.

The Regional Director also concurs with the Council's recommendation to prohibit directed fishing for arrowtooth flounder and that a specified ITAC of 8,500 mt is sufficient to support bycatch amounts of arrowtooth flounder caught incidental to other directed fishing operations. Under authority provided at § 675.20(a)(8), the Regional Director is prohibiting directed fishing for Greenland turbot, "other rockfish," and arrowtooth flounder, and for sablefish harvested with trawl gear in the Bering Sea and Aleutian Islands management areas effective January 29, 1992.

Allocation of Prohibited Species Catch (PSC) Limits

Crab, Halibut, and Herring

PSC limits of red king crab and *C. bairdi* Tanner crab in specific zones (50 CFR 675.2) of the Bering Sea subarea and for Pacific halibut throughout the BSAI area are specified under § 675.21(a). The PSC limits are:

—200,000 red king crabs applicable to Zone 1;
—One million *C. bairdi* Tanner crabs applicable to Zone 1;
—Three million *C. bairdi* Tanner crabs applicable to Zone 2;
—4,400 mt of Pacific halibut (primary PSC limit) applicable to Zones 1 and 2H; and
—5,333 mt of Pacific halibut (secondary PSC limit) applicable to the entire BSAI area.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. Based on 1991 survey data, the projected 1992 Bering Sea-wide herring biomass is 95,649 mt, resulting in a 1992 herring PSC limit of 956 mt. Regulations under § 675.21(b) authorize the apportionment of each PSC limit into PSC allowances that are assigned to specified fishery categories. Existing regulations at § 675.21(b)(4) specify five DAP fishery categories for this purpose (midwater pollock, Greenland turbot, rock sole, yellowfin sole/other flatfish, and "other fisheries"). At its December 1991 meeting, the Council adopted the prohibited species allowances in Table 4 of this notice, based on the currently anticipated bycatch of crabs, halibut, and herring during the 1992 fishing year. The Council adopted the AP's recommendation to allocate zero amounts of prohibited species bycatch allowance to the Greenland turbot fishery category, which includes both the Greenland turbot and arrowtooth flounder trawl fisheries. The Council expressed its intent that specified TAC amounts for these two species be only available for bycatch purposes, and no directed fisheries for Greenland turbot or arrowtooth flounder should be allowed in 1992. As such, prohibited species bycatch allowances for the Greenland turbot category are not necessary.

TABLE 4.—FINAL 1992 PROHIBITED SPECIES CATCH ALLOWANCES

Fisheries	Zone 1	Zone 2	Zones 1+2H	BSAI-wide
Red king crab, number of animals:				
DAP flatfish	75,000			
DAP rocksole	85,000			
DAP turbot	0			
DAP other	40,000			
Total	200,000			

TABLE 4.—FINAL 1992 PROHIBITED SPECIES CATCH ALLOWANCES—Continued

Fisheries	Zone 1	Zone 2	Zones 1+2H	BSAI-wide
C. bairdi Tanner crab, number of animals:				
DAP flatfish	100,000	1,225,000		
DAP rocksole	700,000	300,000		
DAP turbot	0	0		
DAP other	200,000	1,475,000		
Total	1,000,000	3,000,000		
			Primary Halibut	Secondary Halibut
Pacific halibut, metric tons:				
DAP flatfish			743	901
DAP rocksole			660	800
DAP turbot			0	0
DAP other			2,997	3,632
Total			4,400	5,333
Pacific Herring, metric tons:				
Midwater pollock				573
DAP flatfish				134
DAP rocksole				0
DAP turbot				0
DAP other				249
Total				956

Remaining differences between the prohibited species bycatch allowances listed in Table 4 and those proposed (56 FR 58531; November 20, 1991) reflect differences between the proposed and final groundfish specifications in Table 1, changes in anticipated harvest of Pacific cod by trawl gear, and anticipated changes in fishery bycatch needs pending Secretarial approval of Amendment 19 to the FMP. This amendment was adopted by the Council at its December 1991 meeting, and would reduce the halibut PSC limit established for trawl gear from 5,333 mt to 5,033 mt and establish a separate halibut PSC mortality limit for non-trawl gear (750 mt). A regulatory amendment associated with Amendment 19 was also adopted by the Council that would revise the number of trawl fishery categories that are eligible to receive prohibited species bycatch allowances. Pending Secretarial approval, these changes to the management of prohibited species bycatch in the groundfish fisheries will be implemented under separate rulemaking that would supersede the PSC bycatch allowances specified in this notice. If approved and implemented in 1992, the bycatch of Pacific halibut by non-trawl fisheries and the bycatch of crab, halibut, and herring in the revised trawl fishery categories will be counted against the respective PSC allowances from the beginning of the 1992 fishing year.

Seasonal Apportionments of PSC Limits

Regulations at § 675.21(b)(2) authorize the Secretary, after consultation with the Council, to establish seasonal apportionments of prohibited species bycatch allowances among the fisheries to which bycatch has been apportioned. Under § 675.21(b)(2), the basis for any such apportionment must be based on the following types of information:

1. The seasonal distribution of prohibited species;

2. Seasonal distribution of target groundfish species relative to prohibited species distribution;

3. Expected prohibited species bycatch needs on a seasonal basis relevant to change in prohibited species biomass and expected catches of target groundfish species;

4. Expected variations in bycatch rates throughout the fishing year;

5. Expected changes in directed groundfish fishing seasons;

6. Expected start of fishing effort; and

7. Economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry.

At its December 1991 meeting, the Council recommended seasonal apportionments of each of the halibut bycatch allowances listed in Table 5. In making these recommendations, the Council adopted recommendations presented by its AP. The AP considered and balanced a variety of factors. In particular, it noted that bycatch allowances specified for 1991 resulted in premature closures of the Pacific cod and yellowfin sole trawl fisheries, an opportunity to harvest available groundfish was foregone.

TABLE 5.—FINAL SEASONAL ALLOCATION OF THE 1992 PACIFIC HALIBUT AND CRAB BYCATCH ALLOWANCES

Fishery	Percent	Seasonal bycatch allowance
Pacific Halibut		
DAP Flatfish:		
Jan. 01–Apr. 30	0	0
May 01–Aug. 02	50	451
Aug. 03–Dec. 31	50	450
DAP Rocksole:		
Jan. 01–Mar. 29	75	600
Mar. 30–Jun. 28	12.5	100
Jun. 29–Sep. 27	12.5	100
Sep. 28–Dec. 31	0	[1]
DAP Turbot:		
Jan. 01–Dec. 31	0	0
DAP "other fishery":		
Jan. 01–Mar. 29	49	1,774
Mar. 30–Jun. 28	27	995
Jun. 29–Sep. 27	24	863
Sep. 28–Dec. 31	0	[1]
Total Halibut		5,333
Red King Crab (number of crab)		
DAP "other fishery":		
Jan. 01–Mar. 29		19,600
Mar. 30–Jun. 28		5,100
Jun. 29–Sep. 27		15,300
Sep. 28–Dec. 31		[1]
Total		40,000
C. Bairdi Tanner Crab (number of crab)		
DAP "other fishery":		
Zones 1 and 2		
Jan. 01–Mar. 29	132,000	990,500
Mar. 30–Jun. 28	17,000	121,125
Jun. 29–Sep. 27	51,000	363,375
Sep. 28–Dec. 31	[1]	[1]
Total	200,000	1,475,000

[1] Remainder.

The Pacific cod fishery shares the Pacific halibut bycatch allowance allocated to the "other fishery," and is expected to continue to be important as

an early year target fishery due to the anticipated completion of the Bering Sea pollock roe fishery by mid-February and the delayed start of the flatfish fisheries until May 1 (§ 675.23(c)). Pacific cod is most vulnerable to trawl gear early in the year when the catch per unit of effort is highest and historical Pacific halibut bycatch rates are lowest. The AP conceded that the Pacific halibut bycatch apportionment could constrain the "other fishery" based on experience in 1990 and 1991. No quantitative estimate of this constraint can be made because resulting bycatch rates due to the vessel incentive program to reduce Pacific halibut bycatch in the Pacific cod trawl fishery are unknown. Regulations implementing this program (§ 675.26) became effective near the completion of the 1991 Pacific cod fishery, and the 1992 fishing year will be the first year that this fishery operates under the incentive program. The Secretary anticipates that prohibited species bycatch rates will be reduced in 1992 as the incentive program is implemented and enforced.

The Pacific cod trawl fishery could produce the largest economic return by having the opportunity to fish the resource early in the year. Consequently, the AP recommended that 76 percent of the Pacific halibut PSC allowance apportioned to the "other fishery" be made available in the first two quarters of 1992 to support the Pacific cod trawl fishery. The remainder of the Pacific halibut bycatch allowance is apportioned to the third and fourth quarters to support the rockfish fishery and directed fishery for pollock using non-pelagic trawl gear.

The AP also recommended that 75 percent of the Pacific halibut bycatch allowance apportioned to the rock sole fishery be allocated to the first quarter of 1992 when most of the rock sole TAC is harvested in the high-valued rock sole roe fishery. The remaining amounts of the rock sole halibut bycatch allowance are equally apportioned to the second and third quarter to support a small directed effort for rock sole outside the roe season.

As mentioned above, the yellowfin sole and "other flatfish" season is delayed until May 1 of each year to reduce high Pacific halibut and red king crab bycatch rates that occur earlier in the year (§ 675.23(c)). The Pacific halibut bycatch allowance apportioned to the yellowfin sole and "other flatfish" category is equally divided into two seasonal allocations: May 1–August 2, and August 3–December 31. The recommended allocation of the Pacific halibut bycatch allowance is intended to prevent an excessive bycatch of Pacific halibut in July and August when Pacific halibut become more vulnerable to shallow water fisheries and bycatch rates increase, thereby reducing the likelihood of a premature closure of the yellowfin sole fishery. The AP also recommended that the crab bycatch allowance apportioned to the "other fisheries" be seasonally allocated to ensure that amounts of crab bycatch allowance are available to support the non-roe pollock season in the Bering Sea (June 1–December 31).

The Council adopted the recommendations of the AP as an effective balance of the interests affected by the rock sole, yellowfin sole/other flatfish, and "other fisheries" prohibited species bycatch allowances.

The purpose of the seasonal apportionments of prohibited bycatch allowances is to assure some fishing opportunity for fisheries using bottom trawl gear in the second and third quarters of the year. In 1991, the bottom trawl fisheries for pollock and Pacific cod were closed in Zones 1 and 2H on May 3, and in the entire BSAI area on May 8. The fisheries were reopened during the first week of the third quarter of 1991 and then closed for the remainder of the year, resulting in a significant portion of the Pacific cod TAC remaining unharvested due to attainment of the halibut bycatch allowance specified for the "other fishery." Similarly, the BSAI was closed to fishing for yellowfin sole/other flatfish on October 15, when these fisheries attained their Pacific halibut bycatch allowance. The Council's recommended seasonal apportionments of the prohibited species bycatch allowances are intended to allow an increase amount of the groundfish OY to be harvested by providing for directed groundfish fisheries when catch per unit effort are high and corresponding prohibited species bycatch rates are relatively low.

In approving the Council's recommended seasonal apportionment of the Pacific halibut bycatch allowances to the rock sole, yellowfin sole/other flatfish, and "other fishery" categories, NMFS considered seven types of information specified at § 675.2(b)(2) as follows:

1. The biomass trends and distribution of Pacific halibut as summarized in appendix A of the SAFE report dated November 1991 and other scientific documents of the International Pacific Halibut Commission;

2. The seasonal distribution of the groundfish fisheries as described in the SAFE report dated November 1991 and other NMFS documents and the Council's recommendation that directed fisheries for Greenland turbot, arrowtooth flounder, "other rockfish," and sablefish with trawl gear be prohibited;

3. The expected Pacific halibut bycatch by each of the fishery categories that are eligible to receive prohibited species bycatch allowances based on historical bycatch rates presented in appendix C of the SAFE report dated November 1991;

4. The expected variations in bycatch rates throughout the year based on the same data referenced in item 3;

5. The establishment of roe and non-roe seasons for pollock in the Bering Sea; and the delay of directed fishing for flatfish species except rock sole until May 1;

6. The delay of the 1992 groundfish trawl fisheries until the effective date of sea lion protection measures (January 20, 1992); and

7. Resulting economic effects of seasonal apportionments of the prohibited species bycatch allowances are expected to be positive if more groundfish are harvested with non-pelagic trawl gear than otherwise would be possible without the seasonal apportionments. No data are available to quantify the marginal benefit of this action.

Groundfish PSC limits

No PSC limits for goundfish species are specified in this notice. Authority to annually specify PSC limits for groundfish species or species groups for which the TAC can be completely harvested by domestic fisheries is provided at § 675.20(a)(6). In practice, these PSC limits apply only to JVP or TALFF fisheries for species that have a zero JVP or TALFF apportionment. At this time, no groundfish are proposed to be allocated to either JVP or TALFF and specifications of groundfish PSC limits are unnecessary.

Classification

This action is authorized under 50 CFR 611.93(b) 675.20 and complies with Executive Order 12291.

NMFS prepared an environmental assessment on the 1992 TAC specifications, which concludes that no significant impact on the environment will result from their implementation.

Immediate effectiveness of the notice of directed fishing closures for Greenland turbot, "other rockfish," arrowtooth flounder, and sablefish allocated to trawl is necessary to prevent excessive harvests of these species. Without this action, specified TAC amounts will be prematurely

reached and retention of these species will become prohibited, which is to the disadvantage of U.S. fishermen to retain bycatch amounts of these species. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment or to delay its effective date. As immediate effectiveness of this action is necessary to benefit fishermen who would otherwise forego harvestable amounts of groundfish, the 30-day delayed effectiveness is also waived. However, interested persons are invited to submit comments in writing to the Regional Director (see ADDRESSES) above for 15 days after the effective date of this notice.

Pursuant to the requirements of section 7 of the Endangered Species Act, NMFS has determined that the TAC specifications for the 1992 BSAI groundfish fishery are not likely to jeopardize the continued existence and recovery of any endangered or threatened species.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries, Reporting and recordkeeping.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-2536 Filed 1-29-92; 4:36 pm]

BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS is establishing a directed fishing allowance and is prohibiting directed fishing for pollock in statistical area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent the first quarter total allowable catch (TAC) for pollock in statistical area 62 in the GOA from being exceeded. The intent of this action is to promote optimum use of groundfish while conserving pollock stocks.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), January 28, 1992, through 12 midnight, A.l.t., March 29, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586-7228.

SUPPLEMENTARY INFORMATION:

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA are managed by the Secretary of Commerce under the Fishery Management Plan for the Gulf of Alaska Groundfish Fishery (FMP) under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

The amount of a species or species group apportioned to a fishery is TAC, as stated in § 672.20(a)(2). Under the final notice of initial specifications (57 FR 2844; January 24, 1992), the TAC of pollock for the combined Western/Central (W/C) Regulatory Area in the GOA was established as 84,000 metric tons (mt).

Under regulations at 50 CFR 672.20(a)(2)(iv), the TAC for pollock in the combined W/C Regulatory Area is apportioned among statistical areas 61, 62, and 63, in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Each apportionment is divided equally into the four quarterly reporting periods of the fishing year. The apportionment to statistical area 62 is 18,480 mt (57 FR 2844; January 24, 1992). This amount is further divided into quarterly allowances of 4,620 mt.

Within any fishing year, any unharvested amount of any quarterly allowance of TACs will be added in equal proportions to the quarterly allowances of the following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Within any fishing year, harvests in excess of a quarterly allowance of any TAC will be deducted in equal proportions from the quarterly allowances of each of the remaining quarters of that fishing year.

Under § 672.20(c)(2), the Director of the Alaska Region, NMFS (Regional Director), has determined that the apportionment in statistical area 62 will soon be reached. Therefore, NMFS is establishing a directed fishing allowance of 3,970 mt, and is setting aside the remaining 650 mt of the current apportionment as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishery soon will catch its directed fishing allowance. Consequently, under § 672.20(c)(2), NMFS is prohibiting directed fishing for pollock in GOA statistical area 62, effective from 12 noon, A.l.t., January 29, 1992, through 12 midnight, A.l.t., March 29, 1992.

After this closure, in accordance with § 672.20(g)(3), amounts of pollock retained on board a vessel in GOA statistical area 62 may not equal or exceed 20 percent of the aggregate amount of groundfish other than pollock retained at the same time by the vessel during the same trip as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-2392 Filed 1-28-92; 4:30 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 22
Monday, February 3, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amendment No. 346]

Food Stamp Program; Income Exemption for Homeless Households in Transitional Housing From the Mickey Leland Memorial Domestic Hunger Relief Act

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Food Stamp Program regulations to implement section 1721 of the Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101–624, title XVII, 104 Stat. 3786, November 28, 1990). This proposed provision allows an income exclusion for households living in transitional housing that is an amount equal to 50 percent of the maximum shelter allowance provided to families receiving Aid to Families with Dependent Children (AFDC) residing in permanent housing under a State agency's approved AFDC plan which includes an identifiable AFDC shelter allowance or component.

DATES: Comments must be received on or before March 4, 1992, to be assured of consideration.

ADDRESSES: Comments should be submitted to Judith M. Seymour, Eligibility and Certification Regulation Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments can also be sent via fax to the attention of Ms. Seymour at (703) 756–4354. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be addressed to Ms. Seymour at the above address or by telephone at (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1521–1

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521–1. The Department has classified this rule as nonmajor. The rule will not have an annual effect on the economy of $100 million a year or more. The rule will have little or no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Further, the rule will not have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the proposed rule and related notice(s) to 7 CFR 3015, subpart V (48 FR part 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-et seq.). Betty Jo Nelsen, Administrator of the Food and Nutrition Service (FNS), has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This proposed rule does not contain reporting on recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

The Mickey Leland Memorial Domestic Hunger Relief Act (Pub. L. 101–624, title XVII, 104 Stat. 3783, November 28, 1990) made a number of changes in the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.). This proposed rulemaking pertains to the provision of the Mickey Leland Memorial Domestic Hunger Relief Act (known hereafter as the Leland Act) which allows homeless households an income exclusion in an amount equal to 50 percent of the maximum shelter allowance provided to AFDC families living in permanent housing under a State agency's approved AFDC plan which includes an identifiable AFDC shelter allowance or component.

Section 906 of the Food, Agriculture, Conservation and Trade Act Amendments of 1991, Public Law 102–237, 105 Stat. 1818, December 13, 1991, added language to the Leland Act language which clarifies that this provision is effective only if the State agency calculates a shelter allowance to be paid under the State plan separate and apart from payments for other household needs even though it may be paid in combination with other allowances in some cases. This additional language confirms our interpretation of the Act as stated in this rule and in our February 22, 1991 and June 26, 1991 memoranda which provided for the implementation of this policy retroactive to October 1, 1990.

Currently, the regulations at 7 CFR 273.9(c)(1) provide that any gain or benefit which is not in the form of money payable directly to the household is excluded from income countable to the household for food stamp purposes. Also excluded from income are certain payments that are not payable directly to a household but are paid to a third party for a household expense. In addition, the Food Stamp Act currently excludes general assistance (GA) and public assistance (PA) "vendor payments" which are not made directly to the household but paid to a third party on behalf of the household to pay household expenses and are not part of the "normal" grant, i.e. shelter payments in excess of the maximum AFDC shelter allowance. Further, 7 CFR 273.9(c)(1)(ii)(D) excluded from income PA and GA housing assistance payments paid to a third party on behalf

of a household residing in temporary housing, as long as the temporary housing unit lacked facilities for preparing and cooking hot meals or lacked refrigerated storage of food used for home consumption. This income exclusion was effective until September 30, 1990.

The exclusion of PA and GA housing assistance payments as required by 7 CFR 273.9(c)(1)(ii)(D) was mandated by section 807 of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100–77, as amended by section 10 of Public Law 101–220). The Stewart B. McKinney Homeless Assistance Act (known hereafter as the McKinney Act) amended section 5(k) of the Food Stamp Act to exclude from income the entire PA or GA payment made to a third party on behalf of a household residing in temporary housing provided that such a temporary housing unit lacked facilities for the preparation and cooking of hot meals or the refrigerated storage of food for home consumption. This provision recognized the special needs of families and individuals living in such temporary housing, including housing commonly known as "welfare hotels".

Subsequently, section 1721 of the Leland Act amended section 5(k)(2)(F) of the Food Stamp Act to exclude a portion of vendored housing payments made on behalf of PA and GA households residing in transitional housing for the homeless. The amount excluded would be an amount equal to 50 percent (rather than the entire amount as provided under the expired McKinney Act provision) of the maximum shelter allowance or component provided to families residing in permanent housing under the State agency's AFDC plan approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et. seq.). This provision of the Leland Act was effective retroactively to October 1, 1990. Furthermore, section 1721 of the Leland Act no longer requires that temporary housing units must lack facilities for preparing and cooking hot meals or lack refrigerated storage of food used for home consumption in order to exempt PA or GA housing assistance payments from income for food stamp purposes, as was the case with the McKinney Act provision.

Congressional intent in approving section 1721 was to encourage and support efforts to move families living in welfare hotels into permanent housing through transitional housing programs. (House Report No. 101–569 Part 1, 101st Cong., 2nd Sess., July 3, 1990, p. 428). Thus, section 1721 provides a limited version of the special treatment previously provided to those families living in welfare hotels. Transitional housing was defined in section 422(12)(A) of the McKinney Act as housing which has the purpose of facilitating the movement of homeless individuals or families to independent living within a reasonable amount of time, as determined by the Secretary of Housing and Urban Development (HUD). Section 422(12)(A) also provides that transitional housing includes housing primarily designed to serve deinstitutionalized homeless individuals and other homeless individuals with mental disabilities, and homeless families with children. HUD has used this definition to develop supportive transitional housing for homeless individuals, and homeless families with children. The Department believes this definition is useful because of its flexibility. Therefore, the Department has decided not to promulgate regulations which would define the term "transitional housing" in connection with section 1721 of the Leland Act. State agencies must make case-by-case determinations as to whether housing for homeless households can be considered transitional or permanent considering the HUD definition of transitional housing as an evaluation criteria.

Accordingly, the Department is proposing to amend 7 CFR 273.9(c)(1)(ii) by revising paragraph (D) to implement section 1721 of the Leland Act retroactively to October 1, 1990. The revised paragraph would provide that payments made to a third party on behalf of a household living in transitional housing shall be excluded from income except for the amount equal to 50 percent of the maximum AFDC shelter allowance or component provided under the State agency's approved AFDC plan for families residing in permanent housing. The portion of the amount included as income under this provision shall be considered as a shelter cost and includable in the calculation of the excess shelter deduction. The Department wishes to emphasize that section 1721 does not apply to State agencies that do not have separately identifiable AFDC shelter allowances or components in their approved AFDC State Plan. Thus, the proposed rule would only affect certain State agencies.

The following example explains how the proposed rule would affect homeless households living in transitional housing which receive GA or PA housing vendor payments in States that have an identifiable AFDC shelter allowance. A household living in permanent housing receives PA benefits in the amount of $450 a month. The identifiable shelter component under the State's AFDC plan is $150. For food stamp purposes, $450 is counted as income. Another household lives in the same jurisdiction in transitional housing known as a "welfare hotel". The State agency pays the hotel $650 on the household's behalf. The household receives a PA grant in the amount of $300. (The $150 AFDC shelter component is included in the payment of $650 to the hotel.) The Leland Act does not change the policy whereby the $500 paid to the hotel over and above the normal AFDC shelter allowance is excluded from income for food stamp purposes. In addition, 50 percent of the $150 AFDC shelter allowance is also excluded. In this example, $75 is excluded from income for food stamp purposes. Consequently, the State agency must then count $375 as income for food stamp purposes ($300 AFDC grant + $75 of the shelter allowance). The household is then entitled to claim $75 in allowable rent expenses.

The following explains how the proposed rule affects households that receive a GA or PA housing vendor payment for transitional housing in States where there is no separately identifiable AFDC shelter allowance. A household living in permanent housing receives a PA grant in the amount of $450 a month. This amount is counted as income for food stamp purposes. Another household lives in the same jurisdiction in a "welfare hotel". The State agency pays the hotel $650 on the household's behalf and the household receives a full $450 PA grant. The full $450 is counted as income for food stamp purposes. Section 5(k)(2)(G) of the Food Stamp Act totally excludes the $650 hotel payment from income for food stamp purposes because the payment is considered special assistance over and above the normal PA grant. So no amount of the State agency's payment to the hotel qualifies for the shelter expense deduction because the entire amount is deducted from income under section 5(k)(2)(G) of the Food Stamp Act.

Implementation

Section 1781 of the Leland Act requires that section 1721 of the Leland Act be effective as of October 1, 1990. Accordingly, the Department issued a policy memorandum to all FNS Regional Offices on February 22, 1991 directing them to inform their State agencies of the effective date of section 1721. Based on that memorandum, State agencies should already be complying with

section 1721 of the Leland Act for all households that newly applied on or after the October 1, 1990 effective date. The current caseload must be converted to the new provision at recertification, at household request, or when the case is reviewed, whichever occurs first and the State agency must provide restored benefits back to the effective date of October 1, 1990. If for any reason a State agency has failed to comply with section 1721, restored benefits must be provided back to October 1, 1990 or the date of the initial food stamp application, whichever is later.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

1. The authority citation of part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

2. In § 273.9, paragraph (c)(1)(ii)(D) is revised to read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(1) * * *

(ii) * * *

(D) Housing assistance payments made to a third party on behalf of a household residing in transitional housing for the homeless, except for an amount equal to 80 percent of the maximum AFDC shelter allowance or component provided to families residing in permanent housing under the States' plan for aid to families with dependent children approved under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.). This provision shall apply only to States where there is a separately identifiable AFDC shelter allowance or component. Any portion of the housing costs not excluded under this provision shall be an allowable shelter cost and includable in calculating the excess shelter deduction in accordance with paragraph (d)(5) of this section.

* * * * *

Dated: January 28, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92–2415 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 91–183]

Importation of Citrus Fruit From Australia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow the importation of oranges, lemons, limes, mandarins, and grapefruit from Australia's Riverland district, an irrigated horticultural area in South Australia. We are taking this action because it appears that adequate means are available to prevent the introduction of fruit flies and other injurious insects into the United States. Adoption of this proposed rule would provide importers and consumers in the United States with an additional source of citrus.

DATES: Consideration will be given only to comments received on or before March 4, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–183. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–6799.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. Paragraphs (e) and (f) of § 319.56–2 contain requirements for the importation of certain fruits and vegetables based on their origin in a definite area or district. The definite area or district must meet certain criteria, including criteria designed to ensure that the area or district is free from all or certain injurious insects.

The regulations also provide, among other things, that all importations of fruits and vegetables, as a condition of entry, shall be subject to inspection at the port of first arrival, and to such treatment as may be required by a U.S. Department of Agriculture inspector (see § 319.56–6). Section 319.56–6 also provides that shipments of fruits and vegetables may be refused entry if the shipment is infested with fruit flies or other dangerous pests and an inspector determines the pests cannot be eliminated by disinfection or treatment.

Currently the regulations in § 319.56 do not provide for the importation of citrus from Australia. Both the Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)) and the indigenous Queensland fruit fly (*Dacus tryoni* (Frogg)), insects injurious to citrus, are known to attack citrus in Australia. These fruit flies are not widely distributed in the United States.

Recently the Australian Quarantine and Inspection Service requested that we consider allowing the entry of oranges (*Citrus sinensis* (Osbeck)); lemons (*C. limonia* (Osbeck) and *meyeri* (Tanaka)); limes (*C. aurantiifolia* (Swingle) and *latiifolia* (Tanaka)); mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* (Blanco)); and grapefruit (*C paradisi* (MacFad.)) from the Riverland district of South Australia. Trapping surveys [1] conducted by the Australian Quarantine and Inspection Service show the Riverland district to be free of all types of fruit flies.

The Riverland district of South Australia comprises the irrigated horticultural areas within 15 "hundreds," geographic subdivisions used in land surveying. The irrigated horticultural areas within the following "hundreds" constitute the pest-free Riverland district: Bookpurnong, Cadell, Gordon, Hamley, Holder, Katarapko, Loveday, Markaranka, Moorook, Murtho, Parcoola, Paringa, Pooginook, Pyap, Stuart, and Waikerie.

We propose to allow importation of oranges, lemons, limes, mandarins, and grapefruit into the United States from the Riverland district of Australia, without treatment for fruit flies, because the Riverland district meets the criteria contained in § 319.56–2 (e)(4) and (f). Specifically, we have determined that:

(1) Within the past 12 months, the Australian Quarantine and Inspection Service has conducted trapping

surveys [1] that show the Riverland district to be free from all fruit flies that attack citrus. The Administrator has determined that the survey methods employed by the Australian Quarantine and Inspection Service are adequate to detect infestations of the Mediterranean fruit fly, the Queensland fruit fly and other fruit flies destructive of citrus.

(2) The Australian Quarantine and Inspection Service has adopted and is enforcing requirements to prevent the introduction of fruit flies destructive of citrus into the Riverland district. The Australian Quarantine and Inspection Service has submitted to the Administrator detailed procedures for the conduct of pest surveys in the Riverland district, and for the enforcement of requirements to exclude fruit flies from this district.[2]

On the basis of the documentation provided by the Australians, and of the pest risk assessment prepared by the Animal and Plant Health Inspection Service (APHIS), it appears that oranges, lemons, limes, mandarins, and grapefruit may be imported from Australia's Riverland district without treatment for fruit flies, provided that the Riverland district remains free of fruit flies that attack citrus. We therefore propose this change to the regulations.

In response to the Australian Quarantine and Inspection Service's request, we also propose to allow oranges, lemons, limes, mandarins, and grapefruit to continue to be imported from the Riverland district in the event of a fruit fly infestation, subject to completion of an APHIS-authorized cold treatment for that fruit fly, and to all other applicable requirements of title 7 of the Code of Federal Regulations, "Subpart—Fruits and Vegetables." Section 319.56–2d of the regulations authorizes and sets forth cold treatments for the following fruit flies destructive of citrus: The Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)), fruit flies of the genus *Anastrepha*, and the Queensland fruit fly (*Dacus tryoni* (Frogg)). Entry would be limited to North Atlantic ports north of and including Baltimore if treatment is to be completed in the United States. The climatic conditions in the northeastern United States would ensure than any injurious pests accompanying shipments of citrus from the Riverland district prior to treatment would not pose a risk in that area. Entry would be allowed through any port if treatment has been completed prior to arrival in the United States. This provision would allow importers and exporters to respond to suddenly changed circumstances, such as a Mediterranean or Queensland fruit fly infestation, without unnecessarily interrupting fruit shipments or creating a significant risk of introducing fruit flies into the United States.

If a fruit fly destructive of citrus should be detected in the Riverland district, and no authorized cold treatment for this fruit fly appears in § 319.56–2d, importation of citrus from the Riverland district into the United States would be prohibited.

Pest risk analyses conducted by APHIS have determined that the pest-prevention and treatment measures proposed in this document would effectively prevent introduction into the United States of the Queensland fruit fly and other fruit flies destructive of citrus. Pest risk analyses conducted by APHIS have further determined that any other injurious insects that might be carried by citrus from Australia's Riverland district would be readily detectable by a U.S. Department of Agriculture inspector (see § 319.56–6).

A new section, § 319.56–2v, containing our proposed changes, would be added to the regulations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed regulations would permit importation of oranges, lemons, limes, mandarins, and grapefruit from the Riverland district of Australia into the United States. However, Australian citrus exporters indicate that navel oranges are the only commodity that would be exported to the United States on a regular basis. The majority of these oranges would enter U.S. markets from June through August, when domestic fresh navel orange supplies are at their lowest levels.

Australian industry officials estimate shipping volumes would range from 100,000 to 200,000 30-liter cartons annually, or appropriately 2,000 to 5,000 tons. Total annual U.S. production of navel oranges approximates 1.3 million tons; Florida's annual production averages 329,000 tons. Thus, the Australian exports would represent less than 2 percent of fresh Florida navel orange production, and less than .5 percent of total fresh navel orange production in the United States.

There are approximately 14,000 orange growers in the United States. Approximately 84 percent of all growers harvest less than 50 acres of oranges annually. These groves represent about 18 percent of the total acreage of oranges harvested. It is obvious that the orange industry consists primarily of small entities. However, since only minimal amounts of oranges will be entering the United States during U.S. orange growers' "off-season," it is unlikely that either small or large growers would be affected by the proposed regulatory change. The proposed change would simply increase the supply of fresh navel oranges in the United States during the summer months. It is not expected to have an impact on related U.S. industries.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, part 3015, subpart V.)

List of Subjects in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend 7 CFR part 319 as follows:

[1] Information regarding how the surveys were conducted can be obtained from the individual listed under "FOR FURTHER INFORMATION CONTACT."

[2] Information concerning this documentation may be obtained from the individual listed under "FOR FURTHER INFORMATION CONTACT."

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables, a new § 319.56–2v would be added to read as follows:

§ 319.56–2v Conditions governing the entry of citrus from Australia.

The Administrator has determined that the following geographic subdivisions, called "hundreds," of the Riverland district of South Australia, Australia, meet the criteria of § 319.56–2(e) and (f) with regard to the Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)) and the Queensland fruit fly (*Dacus tryoni* (Frogg)): Bookpurnong, Cadell, Gordon, Hamley, Holder, Katarapko, Loveday, Markaranka, Moorook, Murtho, Parcoola, Paringa, Pooginook, Pyap, Stuart, and Waikerie.

(a) Oranges (*Citrus sinensis* (Osbeck)); lemons (*C. limonia* (Osbeck) and *meyeri* (Tanaka)); limes (*C. aurantiifolia* (Swingle) and *latifolia* (Tanaka)); mandarins, including satsumas, tangerines, tangors, and other fruits grown from this species or its hybrids (*C. reticulata* (Blanco)); and grapefruit (*C. paradisi* (MacFad.)) may be imported from the Riverland district without treatment for the pests named in this paragraph, subject to paragraph (b) and all other applicable requirements of this subpart.

(b) If surveys conducted in accordance with § 319.56–2(f) detect, in the areas listed in this paragraph, the Mediterranean fruit fly (*Ceratitis capitata* (Wiedemann)), the Queensland fruit fly (*Dacus tryoni* (Frogg)), or other fruit flies for which a cold treatment authorized under § 319.56–2d of this subpart is available, the citrus will remain eligible for importation into the United States in accordance with § 319.56–2(e)(2), provided they undergo that treatment in accordance with the regulations, and provided all other applicable requirements of this subpart are met. If no approved treatment for the detected fruit fly appears in § 319.56–2d, importation of citrus from the Riverland district is prohibited. Entry is limited to North Atlantic ports north of and including Baltimore, MD, if treatment is to be completed in the United States. Entry may be through any port if treatment has been completed before arrival in the United States.

Done in Washington, DC, this 28th day of January 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–2499 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV–91–464]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Proposed Increase in Expenses for the Peanut Administrative Committee for the 1991–92 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the level of authorized expenses under Marketing Agreement No. 146 for the 1991–92 fiscal period. The proposed increase is needed for the Peanut Administrative Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Coments must be received by February 13, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–2170.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 146 (7 CFR part 998), regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291, and has been determined to be a "non-major" rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproporationately burdened. Marketing agreements and orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of peanuts subject to regulation under Peanut Marketing Agreement 146 (7 CFR part 998). Also, there are about 47,000 peanut growers in the 16 States covered under the program. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, Small agricultural producers also have been defined as those having annual receipts of less than $500,000. Some handlers who are signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e. July 1). An annual budget of expenses is prepared by the committee and submitted to the Department for approval. The members of the committee are handlers and producers of peanuts and are familiar with the committee's needs and with the costs for goods, services and personnel for program operations. Thus, they are in a position to formulate appropriate budgets. Such budgets are discussed at industry-wide public meetings and all directly affected persons have an opportunity to participate and provide input into their formulation. The handlers of peanuts who will be directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

A final rule establishing administrative expenses in the amount of $985,000 for the committee for the

crop year ending June 30, 1992, was published in the Federal Register on May 14, 1991 (56 FR 22108).

The committee met on December 12, 1991, and reviewed a proposal to increase the 1991–92 budget by $24,258. This proposed increase would provide:

(1) $10,000 for the purchase of new computer equipment; and

(2) $14,258 for committee staff salary bonuses recognizing the increased work effort of each staff member during the 1991 calendar year in handling a record number of indemnification claims.

Thus, the Peanut Administrative Committee 1991–92 budget of $985,000 is proposed to be increased by $24,258 to $1,009,258. This proposed increase in budget expenses for the 1991–92 fiscal period was approved unanimously by the committee, the agency responsible for local administration of the marketing agreement.

This proposed action would not impose additional costs on handlers as current crop conditions are projected to yield sufficient assessment funds to cover the proposed increase in the budget. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 998 be amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 998.404 is amended by revising paragraph (a) to read as follows:

§ 998.404 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the peanut Administrative Committee for the crop year beginning July 1, 1991, shall be in the amount of $1,009,258, such amount being reasonable and likely to be incurred for the maintenance and functioning of the committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

* * * * *

Dated: January 27, 1992.

Robert C. Keeney,

Deputy Director Fruit and Vegetable Division.

[FR Doc. 92–2352 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–99–AD]

Airworthiness Directives; Piper Aircraft Corporation Models PA–34–200 and PA–34–200T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Piper Aircraft Corporation (Piper) Models PA–34–200 (Seneca) and PA–34–200T (Seneca II) airplanes. The proposed action would require an inspection to ensure that a clevis-head bolt is installed correctly in the nose gear centering spring assembly, reinstallation if found incorrectly installed or replacement if a hex-head bolt is installed, and the installation of a placard that references this installation. Reports of nose gear extension problems prompted the Federal Aviation Administration (FAA) to investigate the nose landing gear system on several of the affected airplanes. The FAA found that the nose gear centering spring assembly bolt was incorrectly installed in many instances. The actions specified by this AD are intended to prevent loss of control of the airplane during landing operations because of the inability to fully extend the nose landing gear.

DATES: Comments must be received on or before April 30, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–99–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlantia Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; Facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–99–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion:

Several reports of nose gear extension problems prompted the FAA to investigate the nose landing gear system on certain Piper Aircraft Corporation (Piper) Models PA–34–200 (Seneca) and PA–34–200T (Seneca II) airplanes. The FAA found that the nose gear centering spring assembly bolt was incorrectly installed in many instances even though the Piper service maintenance and parts manual specifies the correct installation. Normally, bolts are installed with the bolt head up; however, this installation requires the bolt head down to prevent interference with an adjacent structure during nose landing gear actuation.

The manufacturer, Piper, has issued Service Bulletin (SB) No. 893, dated October 11, 1988, which specifies

procedures for installing a part number (P/N) 400–910 clevis-head nose gear centering spring assembly bolt. This service bulletin also specifies the installation of placard P/N 582–943, which includes the following words: "Caution: Rod End Bolt on Nose Wheel Centering Device Must Be Installed With Head Down.——Refer To Service Manual." After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent loss of control of the airplane during landing operations because of the inability to fully extend the nose landing gear.

Since the condition described is likely to exist or develop in other Piper Models PA–34–200 and PA–34–200T airplanes of the same type design, the proposed AD would require an inspection to ensure that a clevis-head bolt is installed correctly in the nose gear centering spring assembly, reinstallation if found incorrectly installed or replacement if a hex-head bolt is installed, and installation of placard 582–943 that references this installation. The proposed actions would be done in accordance with Piper SB No. 893, dated October 11, 1988.

It is estimated that 2,048 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 hour per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $5 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $122,880.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket No. 91–CE–99–AD.

Applicability: Model PA–34–200 airplanes (serial numbers 34–7250001 through 34–7450220) and Model PA–34–200T airplanes (serial numbers 34–7570001 through 34–8170092), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane during landing operations because of the inability to fully extend the nose landing gear, accomplish the following:

(a) Inspect the nose gear centering spring assembly and determine whether a clevis-head bolt or hex-head bolt is installed.

(b) If a part number (P/N) 400–910 clevis-head bolt is installed, ensure that it is correctly installed in accordance with paragraph 2 of the Instructions and Sketch "A" in Piper Service Bulletin (SB) No. 893, dated October 11, 1988.

(1) If the bolt is correctly installed, install placard P/N 582–943 in accordance with paragraph 6(C) of the Instructions in Piper SB No. 893, dated October 11, 1988.

(2) If the bolt is incorrectly installed, disassemble and reinstall in accordance with paragraphs 3 through 6 of the Instructions in Piper SB No. 893, dated October 11, 1988, and install placard P/N 582–943 in accordance with paragraph 6(C) of the Instructions in Piper SB No. 893, dated October 11, 1988.

(c) If a hex-head bolt or a clevis-head bolt that is not P/N 400–910 is installed, replace with a P/N 400–910 clevis-head bolt in accordance with paragraphs 3 through 6 of the Instructions of Piper SB No. 893, dated October 11, 1988, and install placard P/N 582–943 in accordance with paragraph 6(C) of the Instructions in Piper SB No. 893, dated October 11, 1988.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 27, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–2457 Filed 1–31–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 0

[Docket No. R–91–1574; FR–2911–P–01]

RIN 2501–AB18

Standards of Conduct—Proposed Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department's Standards of Conduct regulations at 24 CFR part 0, subpart A, which specify the responsibilities of the Department's ethics officials under the Standards of Conduct Program. The amendments proposed by this document would implement the Secretary's division of program responsibilities between the General Counsel, the Designated Agency Ethics Official, and the Assistant Secretary for Administration, the Alternate Agency Ethics Official. The proposed rule would provide for the Assistant Secretary for Administration to carry out his or her program responsibilities through the Department's newly created Office of Ethics, which reports directly to the Assistant Secretary for Administration. This proposed rule also would

implement the reorganization of the management of the Standards of Conduct Program at the Regional level. The specific revisions proposed by this document are discussed more fully in the **SUPPLEMENTARY INFORMATION** section below.

DATES: *Comment Due Date:* April 3, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Arnold J. Haiman, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3815 or (202) 708–1112 (TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12674 of April 12, 1989, Principles of Ethical Conduct for Government Officers and Employees, directed each Federal agency head to ensure that the rank, responsibilities, authority, staffing and resources of the Designated Agency Ethics Official were adequate to ensure the effectiveness of each Federal agency's ethics program. Within HUD, the responsibility for operation of the Department's ethics or "Standards of Conduct" Program was delegated to the General Counsel, who serves as the Department's Designated Agency Ethics Official. The Assistant Secretary for Administration serves as the Alternate Agency Ethics Official. (See 55 FR 6051, February 21, 1990.)

In January 1990, the Secretary of HUD approved the establishment of a free-standing, independent office of Ethics within the Department's Office of Administration. The Secretary also approved a division of responsibilities for administration and operation of the Standards of Conduct program between the General Counsel and the Assistant Secretary for Administration. Under this division of responsibilities, the General Counsel would continue to provide all legal advice and assistance required for the administration of the Standards of Conduct Program. The Assistant Secretary for Administration is responsible for coordinating and managing the program. This authority includes developing, operating and monitoring all Standards of Conduct Program systems; developing and supervising the operation of Standards of Conduct education and training programs and providing counseling to Department employees, with assistance, when appropriate, from the Office of General Counsel. The Assistant Secretary for Administration would carry out these duties through the Office of Ethics.

The Standards of Conduct program also would be revised at the Regional level. The Regional Directors of Administration would have responsibility for implementing the Standards of conduct program in the Field, as prescribed by the Office of Ethics. The Regional Counsel would continue to serve as Deputy Counselors.

The amendments proposed by this document would implement the operational changes in the Department's administration of its Standards of conduct Program, as approved by the Secretary. This proposed rule would only amend the regulations at 24 CFR part 0, subpart A, which describe the responsibilities of the Department's ethics officials. The sections proposed to be amended are §§ 0.735–101, 0.735–102 and 0.735–104.

Section 0.735–101, Purpose, would be revised to state that all questions about, or requests for, interpretations of regulations governing the Standards of Conduct Program may be directed not only to the Department's Standards of Conduct Counselor, or a Deputy Counselor, as this section currently provides, but also to the Office of Ethics.

Section 0.735–102, Definitions, would be revised to include a definition for "Disclosure Form" and to list the definitions in alphabetical order.

Section 0.735–104, Interpretation and Advisory Service, would be retitled "Responsibilities of Ethics Officials", and would be revised to reflect the new division of responsibilities of the Department's ethics officials under the Standards of Conduct Program.

The purpose of this proposed rule is to implement the Secretary's plan to vest responsibility for the operation of the Department's Standards of Conduct Program in the newly formed, free-standing Office of Ethics.

Other Matters

Coordination

In accordance with the requirements of 5 CFR 735.104, this proposed rule has been reviewed by the Office of Personnel Management and the Office of Government Ethics.

Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

Impact on Economy

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This proposed rule only would affect former, current and prospective Department employees, with respect to matters of standards of conduct as Department employees.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule only would affect former, current, and prospective Department employees, with respect to matters of standards of conduct as Department employees As a result, the proposed rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Regulatory Agenda

This proposed rule was listed as sequence number 1314 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53388) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 0

Administrative practice and procedure, Conflict of interests.

Accordingly, 24 CFR part 0, subpart A would be revised as follows:

PART 0—STANDARDS OF CONDUCT

1. The authority citation for part 0 would be revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 201–212; E.O. 11222, E.O. 12674, 3 CFR, 1964–1965 Comp. P. 306; 5 CFR 735.101–412.

2. Section 0.735–101 would be revised to read in its entirety as follows:

§ 0.735–101 Purpose.

The maintenance of high standards of honesty, integrity and impartiality by Government employees is essential for the proper performance of the public business and the maintenance of confidence by citizens in their Government. To inform the public and Department staff as to the specific application of this general principle, this part sets forth the Department's regulations prescribing standards of conduct for, and governing the submission of statements of employment and financial interests by, its employees. All questions concerning, or requests for, opinions should be directed to the Department Counselor or to a Deputy Counselor, or the Office of Ethics in Headquarters.

3. Section 0.735–102 would be revised to read in its entirety as follows:

§ 0.735–102 Definitions.

Business entity means a corporation, company, firm, partnership, society, joint stock company, or any other organization or institution having a business purpose including, but not limited to:

(1) Non-profit organizations or institutions which own or operate housing units, and

(2) Educational and other institutions doing research and development or related work involving grants or other types of financial assistance from, or contracts with, the Government.

Department means the Department of Housing and Urban Development.

Disclosure Forms means both Public and Confidential Disclosure Forms.

Employee means an employee of the Department other than a Special Government employee.

Person means an individual human being.

Special Government employee means a person who is retained, designated, appointed or employed by the Department to perform temporary duties, with or without compensation, for not more than 130 days, during any period of 365 consecutive days, either on a full-time or intermittent basis, as defined in 18 U.S.C. 202.

4. Section 0.735–104 would be revised to read in its entirety as follows:

§ 0.735–104 Responsibilities of Ethics Officials.

(a) *General Counsel.* The General Counsel is the Department's Designated Agency Ethics Official and the Department's Standards of Conduct Counselor (Department Counselor). As the Designated Agency Ethics Official, the General Counsel has primary responsibility for the Department's Standards of Conduct program, and is vested with the duties and responsibilities of a designated agency ethics official as set forth in 5 CFR 2638.203 of the government-wide ethics regulations promulgated by the Office of Government Ethics.

(b) *Assistant Secretary for Administration.* The Assistant Secretary for Administration is the Alternate Agency Ethics Official. The Assistant Secretary for Administration is responsible for the day-to-day coordination and management of the Standards of Conduct program. The Assistant Secretary for Administration shall carry out his or her responsibilities under the Standards of Conduct Program through the Department's Office of Ethics.

(c) *Director of the Office of Ethics.* Under the direction of the Assistant Secretary for Administration, the Director of the Office of Ethics will coordinate and manage the Department's Standards of Conduct program. The Director of the Office of Ethics will undertake the day-to-day operation of the Standards of Conduct program.

(d) *Regional Director of Administration.* The Regional Director of Administration, in each Regional Office, is responsible for implementing the Standards of Conduct program in the Field, as directed by the Office of Ethics.

(e) *Regional Counsel.* The Regional Counsel, in each Regional Office, is responsible for undertaking those Standards of Conduct program duties, as directed by the Office of General Counsel.

(f) *Deputy Counselors.* The Associate General Counsel for Equal Opportunity and Administrative Law, the Assistant General Counsel for Personnel and Ethics Law, all Regional Counsels, the Director of the Office of Ethics, and any other employees designated by the Department Counselor, shall serve as the Department's Deputy Standards of Conduct Counselors (Deputy Counselors). The Deputy Counselors assist the General Counsel, as the Designated Agency Ethics Official, in carrying out responsibilities with respect to the Department's Standards of Conduct program and in providing advice to former, current and prospective Department employees regarding questions of conflicts of interest and on other matters relating to Standards of Conduct.

(g) *The Inspector General.* The Inspector General is the Deputy Counselor for employees of the Office of Inspector General. The Inspector General shall perform all necessary duties involving the Standards of Conduct program for employees of the Office of Inspector General. These duties include the collection, review and maintenance of all Public and Confidential Financial Disclosure Forms submitted by employees of the Office of Inspector General. The Inspector General shall provide advice and guidance to all former, current and prospective employees of the Office of Inspector General regarding matters related to the Standards of Conduct. legal advice to the Office of Inspector General regarding conflicts of interest and Standards of Conduct shall be provided by the Office of the Associate General Counsel for Program Enforcement.

Dated: December 11, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–2296 Filed 1–31–92; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-91-1577; FR-2874-P-01]

RIN No. 2506-AB06

Correction of Conditions Detrimental to Health and Safety in Community Development Block Grant-Funded Rehabilitation and Preservation Activities

AGENCY: Office of the Assistant Secretary for Community Planning and Development, CPD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise § 570.202, "Eligible Rehabilitation and Preservation Activities," of the Community Development Block Grant regulations to require that all health and safety violations be corrected in a property before CDBG funds could be used for any property improvements not necessary to correct conditions detrimental to health and safety. The purpose of this proposed rule is to assure appropriate targeting of monies available for property improvement and to encourage the development of local health and safety standards.

DATES: *Comment Due Date:* April 3, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: David M. Cohen, Director, Office of Urban Rehabilitation, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-2685. TDD number (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would revise 24 CFR 570.202, "Eligible Rehabilitation and Preservation Activities", of the Community Development Block Grant (CDBG) regulations to require that all health and safety violations first be corrected in a property before CDBG funds could be used for any other improvements to that property. The proposed rule would exempt from its requirements certain properties assisted under specified circumstances.

CDBG grantees would be required to develop or adopt written minimum health and safety standards to which all non-exempted properties assisted in whole or in part with CDBG funds would be required to adhere, before CDBG funds could be used to pay the costs of other improvements or repairs. The determination as to what constitutes appropriate health and safety standards is the responsibility of each grantee.

Currently, CDBG rules do not obligate grantees to bring properties up to a standard condition, including the correction of all health and safety violations, except in cases where the grantee counts the property toward the achievement of its Housing Assistance Plan (HAP) goals of converting substandard units to standard units. In such cases, a grantee must follow the provisions of § 570.306 requiring that a local standard be established which, at a minimum, meets the section 8 Housing Quality Standards (HQS), and ensuring that any properties counted toward the recipient's HAP goals meet that standard.

In advance of this proposed regulatory change, the Department met with a number of public interest groups to solicit their views concerning the type of rehabilitation activities warranting exceptions to this proposed rule. This consultation was undertaken in the interest of assuring that certain locally established rehabilitation program objectives would remain feasible. As a result, it is proposed that properties assisted through the following specific programs be exempted from the requirement that all health and safety violations be corrected before general property improvements may be paid for with CDBG funds:

(1) Programs that provide emergency repairs;

(2) Programs that improve energy efficiency;

(3) Programs that provide for handicapped accessibility, or

(4) Programs that target specific areas for facade treatment (e.g., exterior paint programs) for the purpose of stimulating further investment in the area.

Additionally, the costs of water and sewer hookups to individual properties are exempted from the proposed rule.

It is important to note that the exemptions cited above will not apply to rehabilitation activities used to meet the national objective of aiding in the prevention or elimination of slums and blight, as defined under § 570.208(b). Specifically, when rehabilitation activities occur in a state or locally designated slum and blighted area, § 570.208(b) requires that all deficiencies that make a property substandard be eliminated before CDBG funds can be used for less critical work. The definition for substandard is locally determined, but at a minimum must meet HQS. For rehabilitation activities occurring outside of a slum and blighted area, § 570.208(b) limits rehabilitation to that which is necessary to eliminate specific conditions in a property that are detrimental to public health and safety.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This proposed rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued on February 17, 1981. An analysis of the proposed rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S. C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule is limited in its scope to a refinement of the circumstances under which a recipient may make eligible expenditures for rehabilitation activity. Since the proposed rule only purports to govern the standards under which

federal funds are expended, it is not anticipated that it would have significant impact on small entities.

Executive Order 12612, Federalism.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. While the proposed rule does add an additional requirement to the existing program regulations governing rehabilitation activities of block grant recipients, the change is relatively insignificant, is consistent with the statutory purposes of the program, and is being developed in consultation with recipients and public interest organizations concerned about the administration of CDBG-funded rehabilitation activity.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this proposed rule does not have potential significant impact on family formation, maintenance, and general well-being. Its subject matter affects only the expenditure, by grantees, of funds received under the block grant program. Any affect on family-related concerns would be indirect and minor.

This proposed rule was listed as item 1444 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53380, 53415), in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.218.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and record keeping requirements, Virgin Islands, Student aid.

Accordingly, part 570 of title 24 of the Code of Federal Regulations would be amended as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart C—Eligible Activities

1. The authority citation for part 570 would continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5300–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 570.200 [Amended]

2. In § 570.200(e), the reference to "§ 570.202(b)(3)" would be revised to refer instead to "§ 570.202(c)(3)."

3. In § 570.202, paragraphs (a) through (e) would be redesignated as paragraphs (b) through (f), respectively, and a new paragraph (a) would be added, to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

(a) *Establishment of health and safety standards.* (1) Except as provided in paragraph (a)(2) of this section, each grantee must develop or adopt written health and safety standards, with which each property assisted in whole or part under the grantee's CDBG program must comply, as a condition of using CDBG funds to pay costs associated with any other repairs or improvements to the property. Grantees may choose to use their local code as this standard or develop a standard which focuses on health and safety issues only. Examples of health and safety conditions which this standard would address may include but are not limited to: improper electrical wiring, lack of handrails on stairs, defective or inadequate heating systems, defective plumbing systems, especially broken fixtures or defective supply and waste lines.

(2) Properties assisted through the following specific programs are exempted from the requirement that all health and safety violations be corrected before CDBG funds are used to pay any other costs associated with the repair or improvement of these properties:

(i) Programs that provide emergency repairs;

(ii) Programs that improve energy efficiency;

(iii) Programs that provide handicapped accessibility;

(iv) Programs that target specific areas for facade treatment (e.g., exterior paint programs) for the purpose of stimulating further investment in the area;

(v) Programs that cover the costs of water and sewer hookups to individual properties.

Advance approval by HUD of exceptions under this paragraph (a)(2) is not required; however, the case files established for properties rehabilitated under the programs described in paragraphs (a)(2) (i) through (v) must contain documentation that the properties are excepted from the provisions of paragraph (a)(1) of this section and must cite the basis for the asserted exception.

(3) Properties assisted under the national objective of preventing or eliminating slums or blight are not subject to the requirements set out in paragraphs (a) (1) and (2) of this section, because rehabilitation activity associated with those properties is limited to the correction of substandard conditions, as defined in § 570.208(b) of this part, before other work may be done.

* * * * *

§ 570.208 [Amended]

4. In § 570.208(a)(3)(ii), the reference to "§ 570.202(b) (9) or (10)" would be revised to refer instead to "§ 570.202(c) (9) or (10)".

Dated: December 23, 1991.

S. Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92–2297 Filed 1–31–92; 8:45 am]

BILLING CODE 4210–29–M

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24 CFR Part 570

[Docket No. R–92–1549; FR–2943–P–01]

RIN No. 2506–AB14

Community Development Block Grant Funded Code Enforcement

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 24 CFR part 570 to provide that where CDBG-funded code enforcement activity results in the demolition or conversion of low/moderate income-housing, such housing must be replaced. The proposed rule also would provide that low/moderate-income persons displaced by such conversion or the demolition of any housing (i.e., as a direct result of code enforcement) would be provided relocation assistance at the levels described in, and in accordance with the requirements of, section 104(d) of the Housing and Community Development Act of 1974 or under the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).

DATES: *Comment Due Date:* March 3, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

FOR FURTHER INFORMATION CONTACT: H.J. Huecker, Director, or John Beale, Relocation and Real Estate Division, Office of Urban Rehabilitation, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708–0336. (This is not a toll-free number.) Hearing- or speech-impaired persons may call the TDD number (202) 708–4594.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1988 (53 FR 31234), HUD published an interim rule setting forth the policies and requirements governing displacement, relocation, real property acquisition, and the replacement of low/moderate-income housing under the Community Development Block Grant (CDBG) programs, including the Entitlement Grants program, the State CDBG program, the HUD-administered Small Cities program, Section 108 Loan Guarantee program, and the Special Purpose Grants program (formerly Secretary's Discretionary Fund), and the Urban Development Action Grant (UDAG) program. One of the major purposes of the rule was to implement revisions to section 104(d) of the Housing and Community Development Act of 1974 (the Act) made by section 509 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988). Revised section 104(d) provides that grants under sections 106 and 119 of the Act may be made only if the grantee or state recipient certifies that it is following an antidisplacement and residential relocation plan (Plan).

The Plan must provide for (1) The replacement of occupied and vacant occupiable low/moderate-income dwelling units demolished or converted to another use in connection with a development project assisted under 24 CFR part 570; and (2) relocation assistance for all low/moderate-income persons who occupied housing that is demolished, or occupied a low/moderate-income housing unit that is converted to a use other than for low/moderate-income housing.

The August 17, 1988 interim rule generated several public comment, including the question of whether the section 104(d) requirements were triggered by CDBG-funded code enforcement activities. The Department responded to the public comments in the preamble to the July 18, 1990 final rule adopting the interim rule. (55 FR 29296) With respect to the question concerning the relationship of the section 104(d) requirements to CDBG-funded code enforcement activities, the final rule stated that "code enforcement activity is not covered under this [i.e., the final rule of July 18, 1990) rule." (55 FR 29297) The final rule further stated:

> [W]hile coverage is not statutorily required, the Department is concerned that code enforcement activities have a substantial impact upon the housing supply available to persons of low/moderate-income and may displace low/moderate income households. Accordingly, HUD will publish a proposed rule asking for public comment on a proposal to extend administratively the requirements of this rule to require that relocation assistance be provided to low/moderate-income persons displaced by the demolition of housing or the conversion of low/moderate-income dwelling units, and to require that low/moderate-income dwelling units converted to another use or demolished be replaced, if such demolition or conversion results from CDBG-assisted code enforcement activities. (55 FR 29297)

Under the provisions of the July 18, 1990 final rule, if CDBG funds are used to pay the actual cost of the demolition of low/moderate-income housing or the cost of converting a low/moderate-income dwelling unit to a use other than low/moderate-income housing, the section 104(d) requirement to replace such housing is triggered. In addition, any low/moderate-income person displaced by such CDBG-assisted conversion or by CDBG-funded demolition of any housing is eligible for section 104(d) relocation assistance.

Where CDBG assistance is used solely to pay the administrative costs of code enforcement (such as payment of the salaries of code enforcement inspectors who condemn buildings) and the resulting demolition or rehabilitation is not federally assisted, the statute does not mandate coverage, since the section 104(d)(2) requirements are limited to displacement "in connection with a development project assisted under section 106 or 119."

However, this proposed rule would treat CDBG-funded code enforcement activities that result in non-CDBG assisted demolition of housing or conversion of low/moderate-income housing in the same manner as when CDBG funds are used to pay the actual cost of demolition or conversion of low/moderate-income housing: the one-for-one replacement of housing and relocation assistance requirements, as provided under section 104(d), would be triggered.

Accordingly, the proposed rule would amend the provision for "one-for-one replacement of low/moderate-income dwelling units" and the definition of "displaced person" in §§ 570.496a(c)(1)(i) and (c)(3)(ii)(A) and §§ 570.606(c)(1)(i) and (c)(3)(ii). As amended, these provisions would state that:

> All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low/moderate-income dwelling units. In addition, all such units that are demolished or converted to another use as a direct result of CDBG-funded code enforcement must be replaced with low/moderate-income dwelling units.
>
> * * * * *
>
> The term "displaced person" means any low/moderate-income family or individual who moves from real property, or moves his or her personal property from real property, permanently, as a direct result of the conversion of a low/moderate-income dwelling unit or demolition, where such conversion or demolition results directly from an activity assisted under this part or from CDBG-funded code enforcement. This includes any permanent involuntary move for an assisted activity including any permanent move from the real property that is made: [thereafter picking up existing text of the amended paragraphs.]

The Department does not anticipate that the action proposed by this rule would have a significant impact on the code enforcement activities of CDBG recipients. Less than one-third of CDBG recipients use CDBG funds for code enforcement. Of those CDBG recipients that use CDBG funds for code enforcement, many have designed local programs that coordinate code enforcement with programs that provide housing assistance to low-income families who are displaced by code enforcement. These programs also provide assistance for rehabilitation or other measures that expand the supply of decent, safe sanitary, and affordable housing.

The Department, however, specifically seeks comment from the public on what they envision as possible consequences of the action proposed by this rule. For example, if the requirements of section 104(d) are triggered by CDBG-funded code enforcement activities, would localities shift their resources around so that local funds, rather than CDBG funds are used for code-enforcement activities which displace low-income persons? If localities are unable to use funds, other than CDBG funds, for code enforcement, would the result be a reduction in code enforcement activities? The Department invites comments on these issues, and also invites comments on possible alternative solutions to the problem of displacement of low-income persons by CDBG-funded code-enforcement activities.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12291

This proposed rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the proposed rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would ensure that housing or relocation assistance is provided to low/moderate income persons whose housing is demolished or converted.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule would not have potential for significant impact on family formation, maintenance, and general well-being, and, therefore, is not subject to review under the order. The proposed rule would provide that families that are affected by displacement activity triggered by CDBG-funded code enforcement activity be eligible to receive assistance with respect to their relocation.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, will prepare a Federalism assessment to determine whether implementation of this proposed rule would have substantial, direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities between them and other levels of government. In preparing the Federalism assessment, the Department will take into consideration the public comments received on the proposed rule.

Regulatory Agenda

This proposed rule was listed as sequence number 1450 in the Department's Semiannual Agenda of Regulations published on October 21, 1991 (56 FR 53384, 43416) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Assistance

The Catalog of Federal assistance program numbers are 14.218, 14.219, 14.221, 14.225, and 14.227.

List of Subjects in 24 CFR Part 570

Community development block grants; Grant programs: housing and community development; Loan programs: housing and community development; Low- and moderate-income housing; New communities; Pockets of poverty; Small cities.

Accordingly, 24 CFR part 570 would be amended to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for part 570 would continue to read as follows:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 570.496a, paragraphs (c)(1)(i) and (c)(3)(ii)(A) introductory text would be revised to read as follows:

§ 570.496a Displacement, relocation, acquisition, and replacement of housing.

* * * * *

(c) * * *

(1) *One-for-one replacement of low/moderate-income dwelling units* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low/moderate-income dwelling units. In addition, all such units that are demolished or converted to another use as a direct result of CDBG-funded code enforcement must be replaced with low/moderate-income dwelling units.

* * * * *

(3) * * *

(ii) *Displaced person* (A) The term "displaced person" means any low/moderate-income family or individual who moves from real property, or moves his or her personal property from real property, permanently, as a direct result of the conversion of a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iii) of this section) or demolition, where the conversion or demolition results directly from an activity assisted under this part or results from CDBG-funded code enforcement. This includes any permanent involuntary move for an assisted activity, including any permanent move from the real property that is made:

* * * * *

3. In § 570.606, paragraphs (c)(1)(i) and (c)(3)(ii)(A) introductory text would be revised to read as follows:

§ 570.606 Displacement, relocation, acquisition, and replacement of housing.

* * * * *

(c) * * *

(1) *One-for-one replacement of low/moderate-income dwelling units.* (i) All occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than as low/moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low/moderate-income dwelling units. In addition, all such units that are demolished or converted to another use as a direct result of CDBG-

funded code enforcement must be replaced with low/moderate-income dwelling units.

* * * * *

(3) * * *

(ii) *Displaced person.* (A) The term "displaced person" means any low/moderate-income family or individual who moves from real property, or moves his or her personal property from real property, permanently, as a direct result of the conversion of a low/moderate-income dwelling unit (defined in paragraph (c)(3)(iii) of this section) or demolition, where the conversion or demolition results directly from an activity assisted under this part or from CDBG-funded code enforcement. This includes any permanent involuntary move for an assisted activity, including any permanent move from the real property that is made:

* * * * *

Dated: January 27, 1992.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92-2298 Filed 1-31-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 60-92]

Exemption of Records System Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt the U.S. Marshals Service Prisoner Processing and Population Management System, JUSTICE/USM-005, from the provisions of 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e)(5) and (e)(8) and (g). The exemptions are necessary to protect the security of prisoners, witnesses and informants, law enforcement personnel, and the public; and to prevent a serious threat to law enforcement activities and law enforcement communications systems.

DATES: All comments must be received by March 4, 1992.

ADDRESSES: All comments should be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (room 1103, CAB Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely (202) 514-6329.

SUPPLEMENTARY INFORMATION: The U.S. Marshals Service Prisoner Processing and Population Management System, JUSTICE/USM-005, is being published in full text in the Notice section of today's **Federal Register.**

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16:

Administrative Practice and procedure; Courts; Freedom of information; Privacy; and the Sunshine Act.

The authority for this proposed rule is 5 U.S.C. 552a. Accordingly, pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793-78, it is proposed to amend 28 CFR 16.101 as set forth below.

Dated: January 2, 1992.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.101 by redesignating paragraph (q) as paragraph (s)[1] and by adding new paragraphs (q) and (r).

§ 16.101 Exemption of U.S. Marshals Service (USMS) systems—limited access, as indicated.

* * * * *

(q) The following system of records is exempt from 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e)(5) and (e)(8) and (g):

(1) U.S. Marshals Service Prisoner Processing and Population Management System (JUSTICE/USM-005)

These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(r) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because to release the disclosure accounting would permit the subject of a criminal proceeding to determine the extent or nature of law enforcement authorities' knowledge regarding his/her alleged misconduct or criminal activities. The disclosure of such information could alert the subject to devise ways in which to conceal his/her activities and/or prevent law enforcement from learning additional information about his/her activities, or otherwise inhibit law enforcement efforts. In addition, where the individual is the subject of an ongoing or potential inquiry/investigation, such release could reveal the nature thereof prematurely, and may also enable the subject to determine the identity of witnesses and informants. Such disclosure could compromise the ongoing or potential inquiry/investigation, endanger the lives of witnesses and informants, or otherwise impede or thwart law enforcement efforts.

(2) From subsection (C)(4) to the extent that the system is exempt from subsection (d).

(3) From subsection (d) because to permit unlimited access would permit the subject of a criminal proceeding to determine the extent or nature of law enforcement authorities' knowledge regarding his/her alleged misconduct or criminal activities. The disclosure of such information could alert the subject to devise ways in which to conceal his/her activities and/or prevent law enforcement from learning additional information about his/her activities, or otherwise inhibit law enforcement efforts. Disclosure would also allow the subject to obtain sensitive information concerning the existence and nature of security measures and jeopardize the safe and secure transfer of the prisoner, the safety and security of other prisoners, informants and witnesses, law enforcement personnel, and the public. In addition, disclosure may enable the subject to learn prematurely of an ongoing or potential inquiry/investigation, and may also permit him/her to determine the identities of confidential sources, informants, or protected witnesses. Such disclosure could compromise the ongoing or potential inquiry/investigation, endanger the lives of witnesses and informants, or otherwise impede or thwart law enforcement efforts. Disclosure may also constitute an unwarranted invasion of the personal privacy of third parties. Further, disclosure would reveal access codes, data entry codes and message routing symbols used in law enforcement communications systems. Access to such codes and symbols would permit the subject to impede the flow of law

[1] Paragraph (o) was redesignated as paragraph (q) in a proposed rulemaking at 56 FR 44049 on September 6, 1991.

enforcement communications and compromise the integrity of law enforcement information, and thus present a serious threat to law enforcement activities. To permit amendment of the records would expose security matters, and would impose an impossible administrative burden by requiring that security precautions, and information pertaining thereto, be continuously reevaluated if contested by the prisoner, or by anyone on his or her behalf. Similarly, to permit amendment could interfere with ongoing or potential inquiries/investigations by requiring that such inquiries/investigations be continuously reinvestigated, or that information collected (the relevance and accuracy of which cannot readily be determined) be subjected to continuous change.

(4) From subsections (e)(1) and (5) because the system may contain investigatory information or information which is derived from information collected during official criminal investigations. In the interest of effective law enforcement and litigation, of securing the prisoner and of protecting the public, it may be necessary to retain information the relevance, necessity, accuracy, timeliness and completeness of which cannot be readily established. Such information may nevertheless provide investigative leads to other Federal or law enforcement agencies, or prove necessary to establish patterns of criminal activity or behavior, and/or prove essential to the safe and secure detention (and movement) of prisoners. Further, the provisions of (e)(1) and (e)(5) would restrict the ability of the USMS in exercising its judgment in reporting information during investigations or during the development of appropriate security measures, and thus present a serious impediment to law enforcement efforts.

(5) From subsection (e)(2) because the requirement to collect information from the subject individual would impede the information collection responsibilities of the USMS which is often dependent upon sources other than the subject individual for verification of information pertaining to security risks posed by the individual prisoner, to alleged misconduct or criminal activity of the prisoner, or to any matter affecting the safekeeping and disposition of the individual prisoner.

(6) From subsection (e)(3) because to inform individuals as required by this subject could impede the information gathering process, reveal the existence of an ongoing or potential inquiry/investigation or security procedure, and compromise law enforcement efforts.

(7) From subsection (e)(8) because to serve notice would give persons sufficient warning to compromise an ongoing or potential inquiry/investigation and thereby evade and impede law enforcement and security efforts.

(8) From subsection (g) to the extent that the system is exempt from subsection (d).

* * * * *

[FR Doc. 92-2460 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 795, 870, 872, 873, 874, 875, 876 and 886

RIN 1029-AB49

Abandoned Mine Land Reclamation Fund Reauthorization Implementation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of public hearings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior published a proposed rule on November 8, 1991 (56 FR 57376) which would amend OSM's Abandoned Mine Land Reclamation regulations in light of recently enacted changes to the Surface Mining Control and Reclamation Act of 1977 (SMCRA). This notice announces public hearings on the proposed rule. OSM will conduct public hearings in Washington, DC; St. Louis, Missouri, and Denver, Colorado on the proposed rule.

DATES: The public hearings are scheduled for February 19, 1992, at 9 a.m. local time.

ADDRESSES: The public hearings will be held at the following locations: South Interior Building Auditorium, 1951 Constitution Avenue, NW., Washington, DC; Robert A. Young Federal Building, 1222 Spruce Street, room 10.211, St. Louis, Missouri; and Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado. Please note that the above Washington, DC and St. Louis, Missouri addresses differ from those contained in the prior Federal Register notices related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: D.M. Lytton, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202-208-5365 (Commercial) or 268-5365 (FTS).

SUPPLEMENTARY INFORMATION: OSM published a proposed rule which would amend the Abandoned Mine Land Reclamation regulations, 30 CFR subchapter R, in light of recently enacted changes to title IV of the Surface Mining Control and Reclamation of Act of 1977, Public Law 95-87, as amended by Public Law 101-508 (November 5, 1990). The proposed rule was published in the Federal Register, on November 8, 1991 (56 FR 57376). On December 20, 1991 (56 FR 66003) a notice was published which extended the comment period to February 21, 1992.

OSM has received several requests to hold public hearings on the proposed rule. As a result, OSM has scheduled public hearings for February 19, 1992 at 9 am local time at the locations previously specified in this notice (see "ADDRESSES").

These hearings will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony.

Availability of Copies

Copies of these proposed regulations may be obtained from the U.S. Department of the Interior, Administrative Record, room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone 202-343-5492 or any of OSM's Field Offices.

Dated: January 28, 1992

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 92-2509 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900-AF64

Regional Office Committees on Waivers and Compromises

AGENCY: Department of Veterans Affairs.

ACTION: Proposed Regulation.

SUMMARY: In order to comply with recent legislative changes to 38 U.S.C. 5302(b) (formerly 3102(b)), the Department of Veterans Affairs (VA) proposes to amend 38 CFR 1.964 by

creating a one-year time limit for application for waiver of collection of a home loan program indebtedness.

DATES: Comments must be received on or before March 4, 1992. Comments will be available for public inspection until March 16, 1992. This amendment is proposed to be effective 30 days after the date of publication of the final rules.

ADDRESSES: Interested persons are invited to send written comments to: Secretary of Veterans Affairs (271A), 810 Vermont Avenue, NW., Washington, DC 20420. Comments will be available for inspection in the Veterans Services Unit, Room 170, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, (202) 233–3405.

SUPPLEMENTARY INFORMATION: Public Law 102–54 (June 13, 1991) revised 38 U.S.C. 5302(b) so that a request for waiver of a debt arising out of participation in the VA home loan program administered under authority of 38 U.S.C. chapter 37 must now be made within one year after the date on which the veteran receives notice of the loan program indebtedness. Prior to this legislation, there was no time limit imposed on a request for waiver of a home loan program debt. However, in order for this new one-year time limit to be imposed on a debtor requesting waiver, VA must send such notice by means of certified mail. If VA notifies the debtor of a home loan program debt by means other than certified mail, then there is no time limit imposed on the debtor in which to request waiver. As a result of this legislative change, VA must now amend one of its regulations (38 CFR 1.964) to comply with the new time limit placed on waiver requests of loan program debts.

The Secretary hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that this proposed rule primarily affects only individuals indebted to the U.S. Government as a result of participation in programs administered by the Department of Veterans Affairs.

This proposed rule has also been reviewed under E.O. 12291 and has been determined to be nonmajor because it will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practice and procedures, Veterans.

Approved: December 20, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as set forth below.

PART 1—GENERAL

1. The authority citation for part 1 is revised to read as follows:

Authority: Sections 1.955 to 1.970 issued under 38 U.S.C. 3720(a)(4) and 5302; 5 U.S.C. 5584.

2. In § 1.964, paragraph (e) is revised and an authority citation is added at the end of paragraph (e) to read as follows:

§ 1.964 Waiver; loan guaranty.

* * * * *

(e) *Application.* A request for waiver of an indebtedness under this section shall be made within one year after the date on which the debtor receives, by Certified Mail-Return Receipt Requested, written notice from VA of the indebtedness. If written notice of indebtedness is sent by means other than Certified Mail-Return Receipt Requested, then there is no time limit for filing a request for waiver of indebtedness under this section.

(Authority: 38 U.S.C. 5302(b))

* * * * *

[FR Doc. 92–2446 Filed 1–31–92; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 11–6–5280; FRL–4099–1]

Approval and Promulgation of Implementation Plans; California State Air Quality Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) adopted by the South Coast Air Quality Management District (SCAQMD) on May 5, 1989. The California Air Resources Board (CARB) submitted these revisions to EPA on December 31, 1990.The revision concerns SCAQMD's Rule 109, Recordkeeping for Volatile Organic Compound Emissions, which prescribes recordkeeping requirements, VOC calculations and test methods to demonstrate compliance with VOC emission limits for a number of different source categories such as coatings, graphic arts, adhesives, and solvent cleaning operations. EPA has evaluated Rule 109 and is proposing a limited approval under section 110(k)(3) and 301(a) of the Clean Air Act Amendments of 1990 (CAAA) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under section 110(k) of Rule 109 because the rule does not fully meet the part D, section 182(a)(2)(A) requirement of the CAAA.

DATES: Comments must be received on or before March 4, 1992.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Chief, So. CA & AZ Rulemaking Section (A–5–3), Air & Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. FAX: (415) 744–1077.

Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Section, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 94518.

South Coast Air Quality Management District, Public Information Center, 21865 E. Copley Drive, Diamond Bar, CA 91765–4185.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky (A–5–3), Southern California/Arizona Rulemaking Section, Air & Toxics Division, Environmental Protection Agency, Region 9, San Francisco, CA 94105. Telephone: (415) 744–1188, FTS: 484–1188.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (CAA or the Act) that included the SCAQMD. 43 FR 8964; 40 CFR 81.305. Because the SCAQMD was

unable to reach attainment date of December 31, 1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. CAA section 172(a)(2). The SCAQMD did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA Region 9 notified the Governor of California that the SCAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Public Law 101–549, 104 Stat. 1399, codified at 42 U.S.C. 7401–7671q. In section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas classified as marginal or above and requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles—South Coast Air Basin Area is classified as extreme; [2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990, including the rule being acted on in this notice. This notice addresses EPA's proposed action for Rule 109, Recordkeeping for Volatile Organic Compound Emissions. This rule was found to be complete on February 28, 1991 pursuant to EPA's completeness criteria set forth in 40 CFR part 51, appendix V [3] and is being proposed for limited approval and limited disapproval.

SCAQMD Rule 109 establishes recordkeeping requirements for VOC emissions from coating, graphic arts, adhesives, and solvent cleaning operations. VOCs contribute to the production of ground level ozone and smog. Rule 109 is a new rule which has been adopted to meet EPA's SIP-Call and the section 182(a)(2)(A) CAAA requirements. The following is EPA's evaluation and proposed action for SCAQMD's Rule 109.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAAA, EPA regulations and EPA policy. These requirements are found in section 110 and part D of the CAAA, at 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans), and in the guidance referred to in footnote 1. Among these provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of reasonably available control technology (RACT) for existing major stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. Under the amended Act, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The EPA policy document on recordkeeping applicable to Rule 109 is *Recordkeeping Guidance document for Surface Coating Operations and the Graphic Arts Industry*, dated July 12, 1988. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SCAQMD's Rule 109 is a new rule which was adopted to establish recordkeeping requirements for VOC emissions from coating, graphic arts, adhesives and solvent cleaning operations specific to fourteen source category rules. Rule 109 requires that daily records must be retained on-site for the most recent two-year period for the purpose of determining a rule's applicability, a source's exemption, and rule and permit condition compliance. Records must include:

—The applicable SCAQMD rule number applicable to the operation;
—The SCAQMD permit numbers for the units involved in the operation;
—The amount and type of VOC-containing material used in each permit unit or dispensing station (for non-permit units);
—Daily records of the VOC content, volumes, dilution ratios, and other specific data needed to demonstrate the applicability of an exemption or to demonstrate compliance; and
—VOC test methods and calculation procedures.

The fourteen rules to which the recordkeeping requirements of Rule 109 apply are as follows:

1104—Wood Flat Stock Coating Operations
1106—Marine Coating Operations
1107—Coating of Metal Parts and Products
1122—Solvent Cleaners (Degreasers)
1124—Aerospace Assembly and Component Coating Operations
1125—Can and Coil Coating Operations
1126—Magnet Wire Coating Operations
1128—Paper, Fabric, and Film Coating Operations
1130—Graphic Arts
1136—Wood Products Coatings
1145—Plastic, Rubber, and Glass Coatings and Adhesives
1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations
1164—Semiconductor Manufacturing
1168—Control of Volatile Organic Compound Emissions from Adhesive Applications.

Rule 109 consolidates recordkeeping and reporting requirements for fourteen coating, printing, and solvent cleaning rule categories into one rule. It requires percent solids calculations based on sufficient daily data to satisfy the EPA requirements for cross-line averaging and low solvent coatings.

EPA has evaluated SCAQMD's submitted Rule 109 for consistency with the CAAA, EPA regulations and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules.

Although the approval of SCAQMD's Rule 109 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAAA. These deficiencies are as follows:

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 Ozone and Carbon Monoxide Policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] SCAQMD was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAAA. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

(1) The rule fails to require that sources make and maintain usage records for add-on capture and control equipment, needed to demonstrate and ensure continuous compliance with limits in the rule;

(2) VOC calculation is allowed by EPA Methods 24 and 24A (for rotogravure) or by equivalent ASTM methods approved by the Executive Order without preventing the preemption of EPA enforcement for violations of rule limits when VOC emissions are measured by specified EPA test methods or without specifying which of the test methods, if any, take precedence in determining the occurrence of a violation. In addition, the rule does not specify the criteria by which equivalency is determined, and does not allow for resolution of dissenting opinions on equivalency.

(3) VOC calculation of low-solids adhesives, adhesive primers and stains are to be based on the mass of VOC per volume of material. EPA policy requires VOC calculations (for coatings containing solids) to be based on the mass of VOC per volume of coating, less water and less exempt compounds.

A detailed discussion of the deficiencies in Rule 109 can be found in the Technical Support Document for Rule 109 (dated January 15, 1992), which is available from the EPA Region 9 office. Because of these deficiencies, the rule is not approvable pursuant to section 182(a)(2)(A) of the CAAA because it is not consistent with the interpretation of section 172 of the pre-amended Act as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rule strengthens the SIP. However, the rule does not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of SCAQMD's submitted Rule 109 under section 110(k)(3) and 301(a) of the CAAA.

At the same time, EPA is also proposing a limited disapproval of Rule 109 because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAAA, and, as such, the rules do not meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 6709.)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: January 21, 1992.

Daniel W. McGovern,

Regional Administrator.

[FR Doc. 92–2373 Filed 1–31–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL 4096–9]

Approval and Promulgation of Implementation Plans; Proposed Partial Disapproval of New Jersey Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to disapprove the New Jersey State Implementation Plan (SIP) for ozone to the extent that the New Jersey SIP does not provide for a 1.0 pound per square inch (psi) Reid Vapor Pressure (RVP) tolerance for ethanol blends. The Agency invites comments on the desirability of disapproving the SIP to the extent that it does not provide an exemption for ethanol blends. This action is in response to a petition for reconsideration submitted to the Agency by the Renewable Fuels Association (RFA).

DATES: The Agency does not plan to hold a public hearing on this proposed partial reconsideration of its approval of the New Jersey SIP unless one is requested. If a request for public hearing is not received by February 17, 1992, then a public hearing will not be held. Comments on this proposed rulemaking must be received no later than March 4, 1992. If a public hearing is held, the public comment period will remain open until 30 days after the public hearing. Please direct all correspondence to the addresses shown below.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket A–91–44 by EPA. The docket is located at the Air Docket Section (LE–131), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, in room M–1500, Waterside Mall, and may be inspected from 8:30 a.m. to 12:00 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

Comments should be submitted (in duplicate if possible) to the Air Docket Section at the above address. A copy should also be sent to Mr. Alfonse Mannato at the EPA address listed below.

U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW., (N–397F), Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato (202) 260–9040.

SUPPLEMENTARY INFORMATION:

I. Introduction

This notice describes EPA's proposed action to disapprove the New Jersey SIP for ozone to the extent that the SIP does not provide special treatment for ethanol blends by providing for a 1.0 psi RVP exemption for ethanol blends. The Agency invites comments on this issue. The remainder of this preamble is divided into two parts. The first provides the background for this proposed action, with respect to chronology and broad issues involved. The second section presents EPA's proposed action and rationale.

II. Background

On June 16, 1989, EPA published a **Federal Register** [1] notice announcing its approval of revisions to the New Jersey SIP which limited the volatility of gasoline to 9.0 psi from May 1 to September 15.[2] The SIP revision as approved did not provide for special treatment for ethanol blends and did not provide a 1.0 psi RVP exemption for ethanol blends. EPA approved the SIP revision as a whole, including a provision allowing supplier-specific waivers. The supplier-specific waiver provision permits the state to issue waivers if necessary to avoid dislocations in supply.

As described in the June 16, 1989 **Federal Register** notice cited above, EPA acted consistently with the requirements of sections 110 and 211 of the Clean Air Act.[3] Since EPA has promulgated federal RVP regulations,[4] inconsistent state controls are preempted under section 211(c)(4)(A). However, section 211(c)(4)(C) also permits the Administrator of EPA to exempt a state RVP program from such preemption if it is "necessary to achieve" the applicable NAAQS. As described in the June 16, 1989 notice, EPA explicitly found that the New Jersey revisions were "necessary to achieve" the National Ambient Air Quality Standard (NAAQS) within the meaning of section 211(c)(4)(C). In short, after accounting for the possible reductions from all other reasonably available control measures, New Jersey could demonstrate that these RVP controls were still required to meet the applicable NAAQS.

EPA has received a petition dated December 7, 1990 from the Renewable Fuels Association requesting that the Administrator "reconsider" the Agency's approval of the New Jersey SIP for ozone. The New Jersey SIP as approved does not provide for a 1.0 psi RVP exemption for ethanol blends. RFA asserted in its petition that their members who produce fuel ethanol are unable to market their product as a blending component with gasoline in New Jersey as a result of the lack of a 1.0 psi exemption. They also claim that EPA provided inadequate notice of the omission of the 1.0 psi RVP exemption on ethanol blends. In addition they assert that EPA failed to make a finding that elimination of the 1.0 psi waiver was necessary to achieve the NAAQS for ozone.

It is EPA's position that no specific finding was required that elimination of the 1.0 psi waiver was necessary for New Jersey to achieve the NAAQS for ozone. Because the 1 psi waiver issue was not raised during the public comment period, EPA's final rule on the NJ SIP did not address the absence of the 1 psi exemption. EPA approved the New Jersey SIP revisions in their entirety in 1989, including a supplier-specific waiver provision, based on a determination that the New Jersey rules, which did not contain a 1.0 psi waiver, were necessary to attain the ozone standard within the meaning of section 211(c)(4)(C).

Despite the Agency's position that no specific finding related to the elimination of the 1.0 psi waiver was necessary in approving the New Jersey SIP, the petitioners raise a number of points that have led the Agency to reopen the issue of approval of the New Jersey SIP revisions to the extent that such revisions did not provide for a 1.0 psi RVP waiver for ethanol blends. Because of the important issues raised, EPA is granting the petition and proposing to partially disapprove the New Jersey SIP for ozone.

Arguments Related to Notice

The petitioners argue that the **Federal Register** notices (both proposal and final rule) related to the New Jersey SIP revision [5] were inadequate to notify interested parties of the "elimination" of the 1.0 psi exemption for ethanol in New Jersey. They argue that both of these notices failed to mention the significant adverse effect of the SIP revision on alcohol blends despite the Agency's historical separate treatment of gasoline and alcohol blends. The petitioners also assert that both notices mention only that action was being taken to lower the RVP standard for gasoline and did not mention specifically alcohol blends.

Timing of New Jersey Adoption of the Volatility Regulations

RFA points out in its petition that New Jersey adopted the fuel volatility regulations at issue on January 27, 1989.[6] On March 22, 1989, EPA adopted the Phase I volatility regulations as a final rule.[7] These Phase I regulations, found in 40 CFR 80.27, established a 10.5 RVP requirement for gasoline in New Jersey from May 1 to September 15 and allowed for a 1.0 RVP allowance for ethanol blends.[8] The New Jersey volatility regulations, as noted above, required a 9.0 RVP standard and were found to be "necessary to achieve" the NAAQS by EPA. EPA proposed to approve the SIP revision on March 28, 1989 [9] and issued a final rule approving the revision on June 16, 1989.[10]

National 1 psi Ethanol Exemption

At the time New Jersey adopted its volatility regulations, there was no federal standard applicable to the RVP of ethanol blends. In March 1989, two months after New Jersey's adoption of volatility regulations, EPA published the Phase I volatility standards as a final rule.[11] Under the Phase I final rule, an interim 1.0 psi allowance was provided for gasoline containing between 9 and 10% ethanol. This interim RVP allowance was included after the Agency considered practical problems that ethanol blenders would face in the absence of such an allowance. In general, the practical problems were related to the fact that the vast majority of ethanol blending occurs in tank trucks at the terminal.[12] EPA noted in the Phase I rule that it recognized the burden on ethanol blenders would be greater than that on other refiners.[13]

EPA continued the 1.0 psi exemption in the final rule for Phase II of its gasoline volatility regulations.[14] This decision was based on the conclusion that the 1.0 psi exemption should not adversely affect air quality overall and because of the potential economic harm to the ethanol industry that eliminating the exemption would create.

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[1] 54 FR 25572 (June 16, 1989).

[2] In 1989, the limitation on volatility was effective from June 30 to September 15.

[3] See 54 FR 25573 (June 16, 1989) for a detailed discussion of these provisions as applied to the New Jersey SIP revision discussed in this notice.

[4] 54 FR 11868 (March 22, 1989) and 55 FR 23665 (June 11, 1990).

[5] 54 FR 12654 (March 28, 1989) and 54 FR 25572 (June 16, 1989).

[6] N.J. Admin. Code tit. vii, ch. 27, sub. 25.

[7] 54 FR 11868 (March 22, 1989).

[8] *See* 40 CFR 80.27(a)(1) for applicable standards for 1989–1991 (Phase I) and 40 CFR 80.27(d) for provisions governing the treatment of ethanol blends.

[9] 54 FR 12654 (March 28, 1989).

[10] 54 FR 125572 (June 16, 1989).

[11] 54 FR 11868 (March 22, 1989).

[12] *Id.* at 11873.

[13] *Id.*

[14] FR 23665 (June 11, 1990).

Moreover, EPA expressed, in its final rule for approval of RVP provisions in the Maryland SIP, a commitment to the ethanol exemption which was embodied in the phase II volatility regulations.[15] Maryland's RVP SIP is of particular interest because that State also passed its RVP regulation without including a 1.0 psi exemption for ethanol. Maryland, which passed its RVP regulation in December 1989, also was unsure at the time of the passage of its regulation as to whether EPA would include the 1.0 psi exemption in its final Phase II RVP rule.[16] In final action on the Maryland SIP, EPA approved the SIP with the exception of its application to gasoline-ethanol blends. The 1 psi exemption issue was raised by RFA prior to final action on the Maryland SIP. EPA noted several reasons for that action. First, the action is consistent with the approach taken in EPA's phase II volatility regulations.[17] Second, Maryland's fuel volatility rule will be preempted by the federal rule beginning in 1992. Such preemption will not occur in the case of New Jersey, since its 1992 standard for RVP mirrors federal phase II standards except for the 1 psi exemption.

Availability of Ethanol in the Marketplace

RFA asserts in its petition that its members who produce fuel ethanol are unable to market their product as a blending component with gasoline as a result of the lack of a 1.0 psi volatility exemption for ethanol blends during the period of May 1 to September 15. RFA and the ethanol industry generally share the opinion that in order to effectively penetrate the marketplace, ethanol must be available for sale year round.

III. Proposed Action

Consistent with the above discussed support of a 1 psi ethanol exemption, EPA believes that it is appropriate to keep the federal 1.0 psi exemption in New Jersey. For this reason, EPA is proposing to disapprove the New Jersey SIP to the extent that it does not provide a 1.0 psi exemption for ethanol. Thus, only the 9.0 psi RVP limit in the New Jersey SIP would be exempted from preemption by the federal RVP regulations. The federal 1.0 psi exemption would remain in effect in New Jersey.

Based on RFA's petition and the various issues it raises, EPA is proposing to disapprove the New Jersey SIP revision to the extent that it does not provide a 1.0 psi RVP exemption for ethanol blends. The federal 1.0 psi RVP exemption in 40 CFR 80.27(d) would continue to apply to ethanol blends in New Jersey. The Agency invites public comments on the issues raised by RFA's petition. The petition, and other relevant documents, have been placed in the docket at the location listed in the "**ADDRESSES**" section of this notice

IV. Public Participation

EPA desires full public participation in arriving at final decisions in this rulemaking action. Comments are requested on EPA's proposed course of action and on the issues contained in this notice. EPA also requests comments on the costs and benefits of the proposed ethanol exemption.

All comments received by March 4, 1992, will be considered in EPA's final rulemaking. If a hearing is held, then comments must be received by 30 days after the hearing. comments should be directed to Docket A–91–44. All comments will be available for inspection during normal business hours at the EPA office listed in the addresses section of this notice.

Any commenter may assert that some or all of the information submitted is entitled to confidential treatment. The commenter providing information should clearly distinguish such information from other comments to the greatest extent possible, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent to the contact person listed above, and should not be submitted to the public docket. If a commenter wants EPA to base its decision on a submission labelled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the docket.

Information covered by a claim of confidentiality will be released by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter or other person who submitted the information.

V. Administrative Designation and Regulatory Impact Analysis

This notice is issued as required by section 110 of the Clean Air Act as amended by the Clean Air Act Amendments of 1990. The Administrator's decision regarding the approval or disapproval of this plan revision is based on its meeting the requirements of sections 110 and 211 of the Clean Air Act, and 40 CFR part 51.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291. Any written comments received from OMB and any EPA response to those comments have been placed in the public rulemaking docket.

Authority: 42 U.S.C. 7401–7642.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporation by reference.

Dated: January 22, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–2518 Filed 1–31–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 80

[FRL–4098–6]

Gasoline Detergent Additives Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: On February 13, 1992 the Environmental Protection Agency (EPA) will hold a public workshop to discuss issues related to the regulation of gasoline detergent additives. Section 211(1) of the Clean Air Act (CAA), as amended by the Clean Air Act Amendments of 1990, prohibits any person from selling or dispensing gasoline which does not contain additives to prevent the accumulation of deposits in motor vehicle engines and fuel supply systems. The prohibition is to take effect beginning January 1, 1995. Section 211(1) further provides for EPA to promulgate specifications for such additives by November 15, 1992. The purpose of this workshop is to gather data and to discuss issues related to the rulemaking.

DATES: The public workshop will be convened at 9 a.m. on February 13, and will continue throughout the day as long as necessary until 5 p.m. to complete the presentations and discussions. Comments on the workshop should be submitted as soon as is possible after the workshop as EPA will immediately

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[15] *Id.* at 23807.

[16] *Id.*

[17] *See* the discussion of gasoline-alcohol blends, including a discussion of preemption, in the notice announcing the final rule approving Maryland's ozone SIP revision. 56 FR 23804, 23807 (May 24, 1991).

begin work on the Notice of Proposed Rulemaking.

ADDRESSES: The public workshop will be held at Domino's Farms Activity Room, 24 Frank Lloyd Wright Drive, Ann Arbor, Michigan 48105. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–91–77, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No A–91–77, First Floor, Waterside Mall, Rm. M–1500, 401 M Street SW., Washington, DC 20460. Materials should also be submitted to the contact person.

Materials related to this rulemaking will be placed in Docket A–91–77 by EPA. The docket is located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Jeffrey Herzog, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, Mail Code SDSB–12, 2565 Plymouth Road, Ann Arbor, Michigan, 48105. Telephone: (313) 668–4227. Fax: (313) 668–4368.

SUPPLEMENTARY INFORMATION: As noted above, section 211(1) prohibits (effective January 1, 1995) gasoline from being provided to the ultimate consumer without additives to prevent the accumulation of deposits in engines and fuel supply systems. Section 211(1) also provides for EPA to issue specifications for the detergent additives by November 15, 1992.

As in previous rulemaking actions, EPA strongly encourages full public participation in the development and assessment of information that will be used in developing a final rule. Through this workshop and other cooperative efforts, EPA hopes to gather data and foster a common understanding of the issues involved. For those submitting comments, full supporting rationale, data, and detailed analysis should be submitted whenever possible, to allow EPA to make maximum use of comments.

EPA will make a brief presentation highlighting the issues, options, and plan for the development of the rulemaking. After EPA's presentation, attendees will be encouraged to ask questions and make oral presentations. Any person desiring to make a presentation at the public workshop should notify the contact person listed above of such intent at least seven days before the workshop. The contact person should also be provided an estimate of the time required for the presentation and notification of any need for audio/visual equipment beyond and overhead projector and 8 mm slide projector. A sign-up sheet will be available at the registration table the morning of the workshop to schedule the order of the presentations.

EPA suggests that enough copies of the statement or material for presentation be brought to the workshop for distribution to the audience (estimated at 100). In addition, it will be helpful for EPA to receive an advance copy of any statement or material for presentation before the scheduled workshop date, in order that EPA staff may give such material full consideration. Richard Rykowski, Senior Project Manager, Standards Development Support Branch, will be the presiding officer at the workshop. The workshop will be conducted informally.

Issues to be Addressed

A. Overview

EPA currently envisions a two phase program. In Phase I, the performance of detergent additives in keeping intake valves and fuel injectors clean (i.e.: a keep-clean standard) would be determined by test procedures closely resembling those employed by the California Air Resources Board (CARB) in its regulation of detergent additives (California Code of Regulations, title 13, section 2257). EPA is also considering implementing Phase I performance standards to ensure that an additive does not cause additional combustion chamber deposits over those caused by the base fuel alone.

In Phase II EPA envisions incorporating improved test procedures to determine additive performance in controlling intake valve, fuel injector, and combustion chamber deposits. EPA is also evaluating the feasibility of a keep-clean combustion chamber deposit standard for Phase II, whereby the ability to prevent deposits arising from the base fuel composition is considered in addition to the additive's incremental contribution to such deposits.

B. Certification Focus and Choice of Test Fuels

EPA envisions an approach similar to that employed by CARB whereby a refiner shall test the performance of an additive package in a test fuel(s) representative of that refiner's slate of fuel(s). The performance of an additive package over the refiner's slate of fuels and the range of fuels which could be certified by a given test program would be demonstrated by the submission of supporting technical data. However, it may be difficult to demonstrate that test results on select fuel(s) are applicable for all the fuels of varied composition produced by a refiner. This is a concern which EPA wishes to address if possible by defining the allowed variation in fuel parameters for a particular fuel to be considered sufficiently similar to the test fuel(s) to include in the certification. The fuel parameters which would likely be considered in determining a refiner's test fuel(s) include the following but are not necessarily limited to: Gravity, distillation, RVP, gum, sulfur, olefins, saturates, aromatics, and oxygenates.

EPA has considered several options for the choice of the certification test fuel(s). The option which appears most appropriate is for a refiner to test an additive's performance on both an average conventional and average reformulated fuel (Reformulated Gasoline Notice of Proposed Rulemaking, Docket A–91–02 (56 FR 31176, July 9, 1991)). Other options which are being considered for the test fuel specifications include: worse case fuel, average of all the refiners gasolines, and anti-dumping baseline fuel as proposed for the reformulated gasoline rulemaking (Reformulated Gasoline Notice of Proposed Rulemaking, Docket A–91–02). For all of the options EPA is considering the need for separate testing of summer and winter time fuels. Also, EPA currently envisions that the composition of the test fuel would need to be updated regularly to track changes in a refiner's fuel.

As a long term goal EPA contemplates moving toward the modeling of additive performance which would allow varying additive treatment level as needed by fuel batch. For this approach, however, the necessary data is currently not available, and considerable vehicle testing would be required.

EPA recognizes that the approach envisioned of certifying the fuel/additive combination may result in a greater testing burden for small refiners. However, an alternative additive based certification program does not appear feasible at this time. As a result, EPA is exploring ways in which this burden may be mitigated. Possible solutions include allowing small refiners to use certification test data from large refiners and the grouping of small refiners for certification testing.

C. Intake Valve and Fuel Injector Test Procedures

For Phase I EPA is considering using existing test procedures (ie: the BMW 380i intake valve and Chrysler 2.21 turbo fuel injector procedures) for the evaluation of an additive's performance

regarding intake valve and fuel injector deposits. It is recognized that the vehicle technology used in these procedures is losing its representativeness for the in-use fleet and that for the BMW procedure the age of the test vehicles themselves is becoming a major concern. EPA encourages the development of replacement test procedures which are currently underway at the Coordinating Research Council (CRC). However, it is unlikely that these new procedures will be available in time for their use in Phase I. As mentioned earlier EPA envisions implementing improved test procedures in Phase II.

Despite the existence of available test procedures for Phase I, there are some outstanding issues associated with their use. The CRC and American Society of Testing and Materials (ASTM) have recently highlighted the need to standardize the current keep-clean test procedures for intake valve and fuel injector deposits. Regarding the BMW 380i intake valve test procedure, the agency is particularly concerned about vehicle uniformity, maintenance protocol, operational conditions, and documentation. One of the more prominent concerns is the need for temperature limits (ambient or coolant). The Agency is also concerned about the need to standardize the Chrysler 2.21 turbo fuel injector procedure. Any deficiency in the Chrysler 2.2(1) procedure mainly involves maintenance procedures. EPA envisions the use the forms of these test procedures as implemented by CARB with necessary changes. EPA intends to work with CARB to ensure that EPA and CARB procedures are as similar as possible and to avoid the need for duplication of effort by the fuel producers in certifying fuels.

EPA is considering the adoption of the performance standards for these procedures as implemented by CARB. Satisfactory performance for the BMW 380i procedure would be an average deposit weight of less than 100mg over the accumulation of 10,000 miles. Satisfactory performance for the Chrysler 2.21 turbo test would be less than 5% flow restriction in any one injector over the accumulation of 10,000 miles.

D. Combustion Chamber Test Procedure

The literature illustrates that combustion chamber deposits arise from the base fuel itself, and are significantly increased by the use of some types of deterent additives. These deposits have a significant impact on increasing a vehicle's octane requirement, and may also contribute to increased emissions. Octane requirement increase (ORI) represents a cost to the consumer in that it necessitates the use of higher priced premium fuel. EPA believes that combustion chamber deposit control is desirable in order to prevent additional cost to the consumer and wishes to further evaluate the effect on emissions.

EPA is seeking to gather information on the feasibility of developing a test procedure for Phase I to evaluate an additive's performnce with regard to the control of combustion chamber deposits. For Phase I, EPA envisions that the focus of any combustion chamber deposit requirements would be on controlling additional deposits, and the octane requirement increase associated with the use of certain additives. EPA anticipates that the input of relevant data and testing experience from industry will be essential in developing a combustion chamber deposit test procedure and standard. In the interim period between Phase I and Phase II, EPA intends to gather data to evaluate the feasibility of setting requirements to control the octane requirement increase arising not only from additive use but from the base fuel itself.

E. Oil Viscosity Increase

Oil viscosity increase (OVI) has been cited as a potentially significant adverse side effect associated with the use of some detergent additives. OVI which causes the engine lubricant to move outside of manufacturer's specifications can result in reduced fuel economy, reduced engine durability, and may lead to increased emissions. EPA is seeking to gather information as to the need for, and form of test procedures and performance standards to determine an additive's effect on oil viscosity.

F. Enforcement

EPA is considering an enforcement protocol similar to that employed by CARB. The primary enforcement tool would be by mass balance at the terminal whereby use of the specified additive is quantified by a comparison of records showing amounts purchased and amounts used. Test procedures would be provided by the refiner to allow the quantification of the additive(s) used in finished fuel. Spot checks on the fuel after it leaves the terminal would be performed at the discretion of the agency to verify compliance. While spot checks may be difficult and burdensome, EPA knows of no other simple way to ensure the proper use of additives.

G. Long Term Goals

EPA desires to gain a better understanding of the mechanisms of deposit formation, deposit control, and the impact of deposits on emissions and other aspects of vehicle performance. EPA may serve a useful role as a collection point for test data and thus facilitate work toward the modeling of additive performance for a given fuel. The development of a performance model would serve to minimize the cost of certification. In the near term, data collected will be useful in refining EPA's test protocol for the Phase II rulemaking.

Dated: January 27, 1992.

Michael Shapiro,

Assistant Administrator for Air and Radiation.

[FR Doc. 92-2372 Filed 1-31-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-10, RM-7865]

Radio Broadcasting Services; Sanibel and San Carlos Park, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ruth Communications Corporation, permittee of Station WRWX(FM), Channel 253A, Sanibel, Florida, seeking to reallot Channel 253A from Sanibel, Florida to San Carlos Park, Florida, and to modify its construction permit in accordance with Commission Rule 1.420(i). The coordinates are North Latitude 26-30-02 and West Longitude 81-54-16.

DATES: Comments must be filed on or before March 20, 1992, and reply comments on or before April 6, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David G. O'Neil, Haley, Bader & Potts, 2000 M Street, NW., suite 600, Washington, DC 20036-3374 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-10, adopted January 15, 1992, and released January 28, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-2556 Filed 1-31-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567 and 568

[Docket No. 91-62; Notice 2]

RIN 2127-AE27

Certification of Multistage Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice grants a request to extend the comment period on an agency proposal to amend the certification requirements that apply to incomplete vehicles other than chassis-cabs. An extension of the comment period is desirable to allow the Recreation Vehicle Industry Association (RVIA) sufficient time to consult with its members and submit comments. The members of the RVIA will be directly affected by this rulemaking and therefore are an important source of comments. The comment closing date is changed from January 31, 1992 to March 2, 1992.

DATES: Comments on Docket 91-62, Notice 2 must be received on or before March 2, 1992.

ADDRESSES: Comments should refer to Docket No. 91-62, Notice 2 and be submitted to: Docket Section, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 to 4 pm. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Rutland, Office of Vehicle Safety Standards, room 5320, 400 Seventh St., SW., Washington, DC 20590. Mr. Rutland can be reached by telephone at (202) 366-6565.

SUPPLEMENTARY INFORMATION: On December 3, 1991, NHTSA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend the certification requirements that apply to incomplete vehicles other than chassis-cabs. (56 FR 61392) Under the proposal, the certification label requirements that currently apply to chassis-cab incomplete vehicles would be extended to all incomplete vehicles.

The Recreation Vehicle Industry Association (RVIA), a trade association of over 500 manufacturers of recreation vehicles and their related suppliers, and 114 van converters, petitioned the agency, requesting a 45-day extension of the comment period. RVIA stated that it needed to meet and consult with its members before submitting its comments.

After reviewing the situation, NHTSA agrees with the petitioner that additional time is desirable to permit RVIA to submit its comments. As incomplete vehicle manufacturers, the RVIA members are a unique source of comments that would assist the agency in completing the rulemaking action proposed in the NPRM. In addition, the agency realizes that the individual members, for the most part small business entities, will not or cannot provide their input without the help of RVIA.

Accordingly, the agency believes that there is good cause for the extension and that the extension is consistent with the public interest. However, the 45-day extension requested by RVIA would be nearly as much additional time as the original time to comment. The agency believes that an additional 30 days, until March 2, 1992, would provide sufficient time for RVIA to consult with members and prepare comments for the docket.

Issued on January 29, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-2480 Filed 1-31-92; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 57, No. 22
Monday, February 3, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Notice of Availability of Rural Housing Targeting Set Aside (RHTSA) Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces the availability of Rural Housing Targeting Set Aside (RHTSA) funds for Fiscal Year (FY) 1992. This action is taken to publish notice of the availability of sections 502, 504, 514, 515 and 524 loan/grant funds in targeted, underserved areas and certain colonias that are now eligible for FmHA housing assistance. The intended effect is to make the public aware of eligible targeted counties and targeted housing funds available through FmHA.

DATES: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Joyce H. Akers, Senior Loan Specialist, Multi-Family Housing Processing Division, at (202) 720–1608, or Bob Hall, Senior Loan Specialist, Single Family Housing Processing Division at (202) 720–1474. The address is USDA–FmHA, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250–0700.

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405..... Farm Labor Housing Loans and Grants.
10.410..... Low Income Housing Loans.
10.411..... Rural Housing Site Loans.
10.415..... Rural Rental Housing Loans.
10.417..... Very Low Income Housing Repair Loans and Grant.
10.427..... Rural Rental Assistance Payments.

Discussion of Notice

7 CFR, part 1940, subpart L contains the "Methodology and Formulas for Allocation of Loan and Grant Programs Funds." Exhibit C of subpart L contains information on RHTSA. The following guidance has been provided to FmHA field offices on Fiscal Year 1992 RHTSA funds and designated counties eligible for FmHA housing assistance:

FY 1992 Rural Housing Targeting Set Aside (RHTSA)

State	Very low-income 502 loans FY 1992 set aside	Low-income 502 loans FY 1992 set aside	Total 502 loans FY 1992 set aside	504 grants FY 1992 set aside	504 loans FY 1992 set aside	515 loans FY 1992 set aside
Alabama	738,000	1,107,000	1,845,000	18,000	16,000	775,000
Alaska	246,000	369,000	615,000	6,000	5,000	438,000
Arizona	492,000	738,000	1,230,000	12,000	11,000	516,000
Arkansas	1,230,000	1,846,000	3,076,000	30,000	27,000	1,291,000
Florida	246,000	369,000	615,000	6,000	5,000	438,000
Georgia	3,199,000	4,798,000	7,997,000	77,000	70,000	3,357,000
Idaho	246,000	369,000	615,000	6,000	5,000	438,000
Kentucky	2,706,000	4,060,000	6,766,000	65,000	59,000	2,840,000
Louisiana	1,230,000	1,846,000	3,076,000	30,000	27,000	1,291,000
Mississippi	1,476,000	2,215,000	3,691,000	36,000	32,000	1,549,000
Missouri	246,000	369,000	615,000	6,000	5,000	538,000
New Mexico	492,000	738,000	1,230,000	12,000	11,000	516,000
North Carolina	246,000	369,000	615,000	6,000	5,000	438,000
North Dakota	492,000	738,000	1,230,000	12,000	11,000	516,000
Puerto Rico	3,445,000	5,167,000	8,612,000	83,000	75,000	3,615,000
South Carolina	246,000	369,000	615,000	6,000	5,000	438,000
South Dakota	1,968,000	2,953,000	4,921,000	48,000	43,000	2,066,000
Tennessee	492,000	738,000	1,230,000	12,000	11,000	516,000
Texas	3,691,000	5,537,000	9,228,000	87,000	84,000	3,875,000
Utah	246,000	369,000	615,000	6,000	5,000	438,000
Virginia	984,000	1,476,000	2,460,000	24,000	22,000	1,033,000
West Virginia	246,000	369,000	615,000	6,000	5,000	438,000
State Total	24,603,000	36,909,000	61,512,000	594,000	539,000	27,260,000
Reserve	1,297,000	1,941,000	3,238,000	31,000	28,000	1,435,000
National Total	25,900,000	38,850,000	64,750,000	625,000	567,000	28,695,000

Minimum state funding levels are established in sections 502, 504 and 515, based upon national averages, as follows:

Section 502—Sufficient funds to obligate at least 10 initial loans of $51,000 each.

Section 504—Sufficient funds to obligate at least 1 initial loan/grant of $4,000.

Section 515—Sufficient funds to obligate at least 1 12-unit project of $36,500 per unit cost.

Section 514 funds of $815,000 and section 524 funds of $30,000, are available on a first-come, first-served basis.

800 units of new construction RA are available for section 515 requests.

The RHTSA reserve will be available on an as needed basis for SFH programs. For MFH

the reserve will be available only for patch-outs until April 1, 1992.

Pooling of unused RHTSA funds and RA is tentatively scheduled for July 3, 1992, and may be changed administratively, based upon fund usage.

All unused RHTSA funds and RA are subject to year-end pooling, tentatively scheduled for August 14, 1992.

100 Counties Eligible in FY 1992 for RHTSA Funds Immediately and at Pooling

State	County name
Alabama	Dallas.
Alabama	Russell.
Alabama	Washington.
Alaska	Palmer.
Arizona	Apache.
Arizona	Coconino.
Arkansas	Desha.
Arkansas	Lee.
Arkansas	Lincoln.
Arkansas	Mississippi.
Arkansas	Woodruff.
Florida	Jefferson.
Georgia	Appling.
Georgia	Baker.
Georgia	Candler.
Georgia	Charlton.
Georgia	Clay.
Georgia	Echols.
Georgia	Emanuel.
Georgia	Jenkins.
Georgia	McIntosh.
Georgia	Pulaski.
Georgia	Screven .
Georgia	Taliaferro.
Georgia	Wheeler.
Idaho	Madison.
Kentucky	Bell.
Kentucky	Breathitt.
Kentucky	Casey.
Kentucky	Green.
Kentucky	Harlan.
Kentucky	Knott.
Kentucky	Knox.
Kentucky	Leslie.
Kentucky	Martin.
Kentucky	Robertson.
Kentucky	Whitley.
Louisiana	Catahoula.
Louisiana	Franklin.
Louisiana	Morehouse.
Louisiana	Richland.
Louisiana	St Landry.
Mississippi	Claiborne.
Mississippi	Greene.
Mississippi	Issaquena.
Mississippi	LeFlore.
Mississippi	Oktibbeha.
Mississippi	Washington.
Missouri	Pemiscot.
New Mexico	Mora.
New Mexico	San Juan.
North Carolina	Northampton.
North Dakota	Rolette.
North Dakota	Sioux.
Puerto Rico	Adjuntas.
Puerto Rico	Aguadilla.
Puerto Rico	Barranquitas.
Puerto Rico	Ciales.
Puerto Rico	Coamo.
Puerto Rico	Fajardo.
Puerto Rico	Guyama.
Puerto Rico	Humacao.
Puerto Rico	Jayuya.
Puerto Rico	Juana Diaz.
Puerto Rico	Rio Grande.
Puerto Rico	San Lorenzo.

100 Counties Eligible in FY 1992 for RHTSA Funds Immediately and at Pooling—Continued

State	County name
Puerto Rico	San Sebastian.
Puerto Rico	Utuado.
South Caronlina	Jasper.
South Dakota	Charles Mix.
South Dakota	Corson.
South Dakota	Dewey.
South Dakota	Faulk
South Dakota	Jackson.
South Dakota	Mellette.
South Dakota	Shannon.
South Dakota	Todd.
Tennessee	Campbell.
Tennessee	Grainger.
Texas	Cochran.
Texas	Crosby.
Texas	Dimmit.
Texas	Duval.
Texas	Edwards.
Texas	Hudspeth.
Texas	Jim Wells.
Texas	Kenedy.
Texas	La Salle.
Texas	Maverick.
Texas	Presidio.
Texas	Real.
Texas	Reeves.
Texas	San Jacinto.
Texas	Zavala.
Virginia	Charlotte.
Virginia	Lee.
Virginia	Northampton.
Virginia	Scott.
West Virginia	Webster.

62 Counties Eligible in FY 1992 for RHTSA Pooled Funds Only

State	County name
Alabama	Clay.
Arkansas	Columbia.
Arkansas	Cross.
Arkansas	Jefferson.
Arkansas	Union.
Colorado	Dolores.
Florida	Glades.
Florida	Liberty.
Georgia	Dodge.
Georgia	Jasper.
Georgia	Laurens.
Georgia	Miller.
Georgia	Thomas.
Kentucky	Christian.
Kentucky	Garrard.
Kentucky	Madison.
Kentucky	Pulaski.
Louisiana	Acadia.
Louisiana	Assumption.
Louisiana	Iberville.
Louisiana	Sabine.
Minnesota	Clearwater.
Minnesota	Mahnomen.
Mississippi	Clarke
Mississippi	Monroe.
Missouri	Bollinger.
Missouri	Mercer.
Missouri	Oregon.
Missouri	Ozark.
Missouri	Reynolds.
Missouri	Scotland.
Missouri	Texas.
Missouri	Wayne.
Montana	Blaine.
New Mexico	Catron.

62 Counties Eligible in FY 1992 for RHTSA Pooled Funds Only—Continued

State	County name
New Mexico	Torrance.
North Carolina	Perquimans.
North Carolina	Sampson.
North Carolina	Washington.
North Dakota	Benson.
Oklahoma	Okfuskee.
Texas	Bee.
Texas	Dawson.
Texas	Dickens.
Texas	Floyd.
Texas	Gaines.
Texas	Glasscock.
Texas	Gonzales.
Texas	Hale.
Texas	Jeff Davis.
Texas	Karnes.
Texas	Kleberg.
Texas	Lynn.
Texas	Madison.
Texas	Newton.
Texas	Parmer.
Texas	San Augustine.
Texas	Terry.
Virginia	Accomack.
West Virginia	Gilmer.
West Virginia	McDowell.
West Virginia	Monroe.

Dated: December 31, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-2561 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-07-M

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Area Currently Assigned to the Champaign (IL) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic area currently assigned to Champaign-Danville Grain Inspection Departments, Inc. (Champaign).

DATES: Comments must be postmarked on or before March 19, 1992.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier users may send responses to the

automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the December 2, 1991, Federal Register (56 FR 61223), FGIS asked persons interested in providing official services in the Champaign geographic area to submit an application for designation. Applications were to be postmarked by January 2, 1992. Champaign, Decatur Grain Inspection, Inc. (Decatur), and Thomas C. King and Gary Walker, proposing to incorporate and do business as Champaign-Danville Grain Inspection Departments, Inc. (King/Walker), each applied for the entire area currently assigned to Champaign.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants for designation. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the Federal Register, and FGIS will send the applicant written notification of the decision.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 23, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-2501 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-EN-F

Designation of the Frankfort (IN) and Jinks (IL) Agencies

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Frankfort Grain Inspection, Inc. (Frankfort), and Robert H. Jinks dba Jinks Grain Weighing Service (Jinks), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: March 1, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 1, 1991, Federal Register (56 FR 43580), FGIS announced that the designations of Frankfort and Jinks terminate on February 29, 1992, and asked persons interested in providing official services within the geographic areas currently assigned to these agencies to submit an application for designation. Applications were to be postmarked by October 3, 1991.

Frankfort and Jinks, the only applicants, each applied for the entire geographic area currently assigned to them. FGIS named and requested comments on the applicants for the Frankfort and Jinks area designations in the November 1, 1991, Federal Register (56 FR 56183). Comments were to be postmarked by December 16, 1991. FGIS received no comments by the deadline.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Frankfort and Jinks are able to provide official services in the geographic areas for which they applied.

Effective March 1, 1992, and terminating February 28, 1995, Frankfort is designated to provide official grain inspection and Class X or Class Y weighing, and Jinks is designated to provide Class X or Class Y weighing in the geographic areas specified in the September 1 Federal Register.

Interested persons may obtain official services by contacting Frankfort at 317-654-4602, and Jinks at 217-733-2714.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 23, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-2508 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-EN-F

Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Area Presently Assigned to the Eastern Iowa (IA) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designation of Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), will terminate, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic area to submit an application for designation.

DATES: Applications must be postmarked on or before March 4, 1992.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes the Administrator of the FGIS to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Eastern Iowa located at 1908 South Stark Street, Davenport, IA 52802, to officially inspect grain under the Act on August 1, 1989.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designation of Eastern Iowa ends on July 31, 1992.

The geographic area presently assigned to Eastern Iowa, in the States of Illinois and Iowa, pursuant to section 7(f)(2) of the Act, which will be assigned

to the applicant selected for designation is as follows:

The southern area: Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The northern area: Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines;

Bounded on the East by the eastern Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Leland Farmers Company, Leland, LaSalle County, Illinois (located inside Kankakee Grain Inspection Bureau, Inc.'s area).

Exceptions to Eastern Iowa's assigned geographic area are the following export port locations inside Eastern Iowa's area which have been and will continue to be serviced by FGIS: Cargill Elevator; Continental "B"; Continental "C"; Rialto Elevator; and Gateway Elevator, all in Chicago, Illinois.

Interested persons, including Eastern Iowa, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning August 1, 1992, and ending July 31, 1995. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 23, 1992.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 92-2507 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-EN-F

Food and Nutrition Service

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department of Agriculture is updating the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These adjustments, required by law, take into account changes in the cost of food and statutory adjustments.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 756-2496.

SUPPLEMENTARY INFORMATION:

Publication

As required by law, State agencies implemented this action on October 1, 1991 based on advance notice of the new amounts. Based on regulations published at 47 FR 46485 (October 19, 1982) annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified as non-major because it will not increase the Food Stamp Program's cost by more than $100 million annually. It will not result in a major increase in costs or prices except to the Federal Government, nor will it affect competition, productivity, employment, investment or innovation.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in this Final rule and related Notice to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to review by the Office of Management and Budget.

Background

Thrifty Food Plan (TFP) and Allotments

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets most dietary standards. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. Food stamp allotments are adjusted periodically to reflect changes in food cost levels. Section 3(o)(11) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2012(o)(11) provides for an adjustment on October 1, 1991, based upon 103 percent of the June 1991 cost of the TFP for a family of four persons consisting of

a man and woman ages 20–50 and children 6–8 and 9–11. In June 1991, the cost of the TFP was $451 in Alaska, $578.20 in Hawaii, $530.70 in Guam, and $462.90 in the Virgin Islands.

The maximum food stamp benefit or allotment is paid to households which have no net income. For households which have some income, their allotment is determined by reducing the maximum allotment for their household size by 30 percent of the household's net income. To obtain the maximum food stamp allotment for each household size, the TFP costs for the four-person household were increased by 3 percent, dividual by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar.

Pursuant to section 3 of the Food Stamp Act (7 U.S.C. 2012(o)(3)), maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and D.C., so they are based upon the lower of their respective TFPs or the TFP for rural II Alaska. TFPs for Alaska and Hawaii are based upon an adjusted average for the six-month period that ends with June 1991. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1991 TFP costs. The adjusted average is equal to January-June 1991 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June and the January-June average from 1976 through 1986 (a 1.53 percent increase over January-June costs in Alaska and a 1.82 percent increase in Hawaii). In addition, the urban Alaska allotment is the higher of the allotment that was in effect in urban areas on October 1, 1985 or 100.79 percent of the adjusted Anchorage TFP (see 50 FR 18456, dated May 1, 1984, and 51 FR 16281, dated May 2, 1986).

According to regulations published at 51 FR 16281, dated May 2, 1986, the allotment for rural I areas is the higher of the allotment that was in effect in each rural I area on October 1, 1985 or 128.52 percent of the Anchorage TFP (as adjusted). Nenana, Alaska was the only community designated as rural I by the May 1986 regulation which had a higher allotment on October 1, 1985 than 128.52 percent of the adjusted Anchorage TFP. Thus, beginning May 1, 1986 and continuing through Fiscal Year 1990, allotments for Nenana remained constant at the higher October 1, 1985 levels. Beginning with the October 1, 1990 adjustment, the amount which was 128.52 percent of the Anchorage TFP (as of June 1990) finally became higher than the allotments which were in effect on October 1, 1985 in Nenana. Thus, Nenana could begin to receive the identical allotment levels as all other rural I areas. Therefore, Nenana received the higher allotment levels given all other rural I Alaska areas during FY 1991. Since the allotments in effect in Nenana on October 1, 1985 continue to be lower than the allotment levels for all other rural I areas, Nenana will receive the higher, rural I, allotments during FY 1992 as well.

The rural II allotment is 156.42 percent of the adjusted Anchorage TFP (Alaska TFP). For further information concerning the allotments for urban Alaska, rural I Alaska, Nenana, and rural II Alaska, see 51 FR 16281, dated May 2, 1986.

The following table shows new allotments for urban Alaska, rural I Alaska rural II Alaska, Hawaii, Guam, and the Virgin Islands.

MAXIMUM ALLOTMENT AMOUNTS [1]—OCTOBER 1991 AS ADJUSTED

Household size	Urban Alaska [2]	Rural I Alaska [3]	Rural II Alaska [4]	Hawaii	Guam [5]	Virgin Islands [5]
1	$142	$181	$221	$181	$163	$143
2	261	333	405	333	300	262
3	374	477	580	477	430	375
4	475	606	737	606	546	476
5	564	719	876	720	649	566
6	677	863	1,051	864	778	679
7	748	954	1,161	955	860	750
8	855	1,091	1,327	1,091	983	858
Each Additional Member	+107	+136	+166	+136	+123	+107

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, a 1.03 percent increase in the TFP and rounding.
[2] These levels are 100.79 percent of the Anchorage TFP, as adjusted.
[3] These levels are 128.52 percent of the Anchorage TFP, as adjusted. Nenana is included in rural I in accordance with regulations published at 51 FR 16281, dated May 2, 1986.
[4] These levels are 156.42 percent higher than the Anchorage TFP, as adjusted.
[5] Adjusted to reflect changes in the cost of food in the 48 States and DC, which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in rural II Alaska.

Maximum allotments for the 48 States and DC were published in a separate notice in the **Federal Register**. These adjustments were made sooner than the adjustments for Alaska, Hawaii, Guam and the Virgin Islands because the data to accomplish the update for the 48 States and DC were available sooner than the data for the other areas.

(7 U.S.C. 2011–2032)

Dated: January 29, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92–2417 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–30–M

Food and Nutrition Services

Food Stamp Program: Maximum Allotments for the 48 States and DC, and Income Eligibility Standards and Deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department of Agriculture is updating: (1) The maximum allotment levels, which determine the maximum amount of food stamps which participating households receive, (2) the gross and net income limits for food stamp eligibility which certain households may have, and (3) the standard deduction and maximum amounts for the excess shelter expense deduction available to certain households. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments.

EFFECTIVE DATE: October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor,

Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302, (703) 305-2496. Copies of the Regulatory Impact Analysis, which is summarized in this preamble, are also available from Ms. Seymour.

SUPPLEMENTARY INFORMATION:

Publication

As required by law, State agencies implemented this action on October 1, 1991 based on advance notice of the new amounts. Based on regulations published at 47 FR 46485-46487 (October 19, 1982) annual statutory adjustments to the maximum allotment levels, income eligibility standards, and deductions are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1. The Department considers it a major action because it will increase the Food Stamp Program's cost by more than $100 million. It will not result in a major increase in costs or prices except to the Federal Government, not will it affect competition, productivity, employment, investment or innovation.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Regulatory Impact Analysis

Need for Action

This action is required by sections 3(o) (1) and (11), 5(c) and 5(e)(4) of the Food Stamp Act of 1977, as amended (7 U.S.C. Secs. 2012(o) (1) and (11), 2014(c), and 2014(e)(4)).

Section 3(o)(11) requires that the October 1, 1991 change in food stamp allotments be based upon 103 percent of the June 1991 cost of the Thrifty Food Plan (TFP) for a family of four persons consisting of a man and woman ages 20-50 and children 6-8 and 9-11. Adjustments are made to take into account household size, economies of scale and a requirement to round the final results down to the nearest dollar increments. Section 5(c) requires that the income eligibility standards for the program be adjusted on October 1, 1991 based on changes in the Federal income poverty guidelines. Section 5(e)(4) requires that the standard deductions and the maximum amounts for the excess shelter expense deductions be adjusted on October 1, 1991 to the nearest lower dollar increments to reflect certain changes for the 12 months ending June 30, 1991.

Benefits

This action increases maximum food stamp allotments, income eligibility standards, and deductions based on the changing cost of living.

Costs

It is estimated that this action will increase the cost of the Food Stamp Program by approximately $1.488 billion in Fiscal Year 1992.

Background

Income Eligibility Standards

The eligibility of households for the Food Stamp Program, except those in which all members are receiving public assistance (PA) or supplemental security income benefits (SSI), is determined by comparing their incomes to the appropriate income eligibility standards (limits). Households containing an elderly or disabled member need to have net incomes below the net income limits, while households which do not contain an elderly or disabled member must have net incomes below the net income limit and gross incomes below the gross income limit. Households in which all members are receiving PA or SSI are categorically eligible; their incomes do not have to be below the income limits.

In addition, elderly individuals (and their spouses) who are unable to prepare meals because of certain disabilities, may be considered separate households, even if they are living and eating with another household. 7 U.S.C. 2012(i). The Act limits separate household status to those persons who meet both of the following requirements:

(1) Their own income may not exceed the net income eligibility standards, and

(2) The income of those with whom they reside may not exceed 165 percent of the poverty line.

The net and gross income are derived from the Federal income poverty guidelines. The net income limit is 100 percent of the guidelines; the gross income limit is 130 percent of the guidelines. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated annually. The effective date of October 1 is required by the Food Stamp Act of 1977, as amended.

The revised income eligibility standards are as follows.

FOOD STAMP PROGRAM

[Oct. 1, 1991-Sept. 30, 1992]

Household size	48 States[1]	Alaska	Hawaii
Net Monthly Income Eligibility Standards (100 Percent of Poverty Level)			
1	$552	$691	$635
2	740	926	851
3	929	1,161	1,068
4	1,117	1,396	1,285
5	1,305	1,631	1,501
6	1,494	1,866	1,718
7	1,682	2,101	1,935
8	1,870	2,336	2,151
Each additional person	+189	+235	+217
Gross Monthly Income Eligibility Standards (130 Percent of Poverty Level)			
1	718	899	825
2	962	1,204	1,107
3	1,207	1,510	1,388
4	1,452	1,815	1,670
5	1,697	2,121	1,952
6	1,942	2,426	2,233
7	2,187	2,732	2,515
8	2,431	3,037	2,797
Each additional person	+245	+306	+282
Gross Monthly Income Eligibility Standards for Households Where Elderly Disabled Are a Separate Household (165 Percent of Poverty Level)			
1	911	1,140	1,047
2	1,221	1,528	1,404
3	1,532	1,916	1,762
4	1,843	2,304	2,119
5	2,154	2,691	2,477
6	2,464	3,079	2,834
7	2,775	3,467	3,192
8	3,086	3,855	3,549
Each additional person	+311	+388	+358

[1] Includes District of Columbia, Guam, and the Virgin Islands.

Thrifty Food Plan (TFP) and Allotments

The TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan suggests amounts of food for men, women, and children of different ages, and it meets dietary standards. The cost of the TFP is adjusted to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. Food stamp allotments are adjusted periodically to reflect changes in food cost levels. Section 3(o)(11) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2012(o)(11)), provides for an adjustment on October 1, 1991, based upon 103 percent of the June 1991 cost of the TFP for a family of four persons consisting of a man and woman ages 20–50 and children 6–8 and 9–11. In June 1991, the cost of the TFP was $360.10 in the 48 States and DC.

To obtain the maximum food stamp benefit for each household size, June 1991 TFP costs for the four-person household (of $360.10) were increased by 3 percent, divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households which have no net income. For households which have some income, the individual household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income.

The following table shows the net allotments for the 48 States and DC.

ALLOTMENT AMOUNTS [1]—OCTOBER 1991 AS ADJUSTED

Household size	48 States and D.C.
1	$111
2	203
3	292
4	370
5	440
6	528
7	584
8	667
Each additional person	+83

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, a 3 percent increase in the TFP and rounding.

Deductions

Food stamp benefits are calculated on the basis of an individual household's net income. Deductions serve to lower household net income and thus to increase household benefits. When a household's net income decreases, its food stamp benefits increase.

The standard deduction is available to all households. The excess shelter expense deduction is available to households with extremely high shelter costs. There is a maximum amount for the excess shelter deduction for households with no elderly or disabled members but no maximum for households with elderly or disabled members. The standard deduction and the maximum amount for the excess shelter expense deduction for households with no elderly or disabled members are being adjusted by this Notice.

Adjustment of the Standard Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, provides that in computing household income, households shall be allowed a standard deduction. 7 U.S.C. 2014(e). This section of the Act also requires that this deduction be adjusted periodically. This deduction was last adjusted effective October 1, 1990. The Act requires that the adjustment in the level of the standard deduction shall take into account changes in the Consumer Price Index for All Urban Consumers (CPI–U) published by the Bureau of Labor Statistics (BLS) for items other than food. 7 U.S.C. 2014(e)(4). The adjustments are rounded to the nearest lower dollar pursuant to the requirements of Sec. 5(e). There are separate standard deductions for the 48 States and D.C., Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new deduction amounts that went into effect on October 1, 1991.

STANDARD DEDUCTIONS FOR ALL HOUSEHOLDS

	Previous standard deductions (effective 10–1–90)	New unrounded numbers (10–1–91)	Standard deductions (effective 10–1–91)
48 States and DC	$116	$122.69	$122
Alaska	199	209.27	209
Hawaii	165	173.21	173
Guam	233	245.35	245
Virgin Islands	103	108.25	108

Adjustment of the Shelter Deduction

Section 5(e) of the Food Stamp Act of 1977, as amended, also provides that, in computing household income, households shall be allowed a deduction for certain excess shelter expenses. 7 U.S.C. 2014(e). There is a maximum amount for the excess shelter expense deduction, unless the household has an elderly or disabled member, in which case there is no maximum. The maximum amount for the excess shelter expense deduction is adjusted annually each October 1 based on changes in the shelter, fuel and utilities components of housing costs in the CPI–U published by BLS. There are separate shelter deductions for the 48 States and DC, Alaska, Hawaii, Guam, and the Virgin Islands.

The following table shows the maximum shelter deductions resulting from the last adjustment, the unrounded results of this adjustment, and the new maximum excess shelter deductions that went into effect October 1, 1991.

MAXIMUM SHELTER DEDUCTIONS FOR HOUSEHOLDS WITHOUT ELDERLY OR DISABLED MEMBER

	Previous shelter deductions (effective 10–1–90)	New unrounded numbers (10–1–91)	Shelter deductions (effective 10–1–91)
48 States and DC	$186	$194.13	$194
Alaska	323	337.36	337
Hawaii	265	276.99	276
Guam	225	235.56	235
Virgin Islands	137	143.23	143

(7 U.S.C. 2011–2032)

Dated: January 24, 1992.

Catherine Bertini,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 92–2416 Filed 1–31–92; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Trail Creek II Timber Sale, Boise National Forest, Boise County, ID; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the Trail Creek II Timber Sale which is located on the Lowman Ranger District, Boise National

Forest. The project area, which lies southwest of the Deadwood Reservoir, is located approximately 100 miles northeast of Boise.

The Trail Creek II Timber Sale Area was analyzed under the Trail Creek Timber Sale Environmental Assessment in June, 1983. The Deciding Officer issued a Finding of No Significant Impact for timber harvesting within the analysis area in July, 1983. Following completion of the EA and the FONSI, the Trail Creek portion of the analysis area was pre-roaded to provide access for timber harvest. After completion of the road construction, the Trail Creek Timber Sale, which covered the northern two-thirds of the EA analysis area, was sold. The Trail Creek II Timber Sale, described in the 1990 Boise National Forest Plan as part of the Forest's Allowable Sale Quantity (ASQ), occurs in the southern one-third of the original EA analysis area. Trail Creek II has been scheduled in the Forest's 5-year Timber Sale Action Plan and the Firm and Tentative Sale Program for Offering by FY 1995.

A review of the 1983 Trail Creek EA indicates a need to supplement the original analysis and disclosure of effects to address current concerns and include standards described in the Boise National Forest Plan. A new analysis will be accomplished with the Trail Creek II EIS.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES AND TIMEFRAMES: The proposal has been previously scoped with a field trip and two mailings. A public field trip to the Trail Creek II Project Area was held on July 31, 1991 by staff from the Supervisor's Office and the Lowman Ranger District. Scoping letters were mailed from the Lowman Ranger District on September 14, 1990, and another set was mailed from the Boise National Forest Supervisor's Office on July 16, 1991 to people who may be affected by the decision.

Additionally, a legal notice and a public notice, which coincided with the first and second mailings respectively were published in the Idaho World and Idaho Statesman newspapers. Comments received from the field trip, the letters, and the notices, were used to guide the initial National Forest Management Act (NFMA) portion of the analysis.

Additional written comments concerning the proposal are encouraged. To be considered in the Draft Environmental Impact Statement (DEIS), comments should be submitted within 30 days following the publication of this announcement in the **Federal Register**.

ADDRESSES: Submit written comments to: District Ranger, Lowman Ranger District, Boise National Forest, HC77 Box 3020, Lowman, Idaho 83637.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Chris L. Wagner, Project Leader, Lowman Ranger District, 208–259–3361.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to implement the Boise National Forest Land and Resource Management Plan by treating timber stands within the project area. Specifically, management direction will attempt to do the following: (1) Improve forest health and the growth of timber stands, (2) contribute to the Forest's ASQ, (3) protect and enhance fisheries and wildlife habitat, and (4) enhance recreation opportunities.

Alternatives to the proposal will consider lesser amounts of individual activities and various combinations of the activities. The most significant differences between alternatives will be: (1) If any inventoried roadless area is treated; and (2) the amount of inventoried roadless area that is treated. A No Action (the project will not take place) alternative will also be considered in the analysis.

As lead agency, the Forest Service will analyze and document direct, indirect and cumulative environmental effects of the range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

The EIS will tier to the Boise National Forest Land and Resource Management Plan (Forest Plan) FEIS (1990) which specifies goals, objectives, desired future conditions, management area direction and standards for the project area. The project area is located in the Lightning Creek and Deadwood Management Areas. Management direction for these areas emphasizes wildlife, timber, range, and visuals.

Preliminary issues for the proposal that have been identified to date include the following:

1. Timber stand conditions and forest health. Insect populations have caused increased growth loss and mortality.

2. Fish Habitat. Removal of barriers from Trail Creek is necessary to improve habitat.

3. Big game vulnerability and roads. Big game (elk, mule deer, and black bear) may be adversely affected if roads built within the project area remain open to hunting traffic at the conclusion of a timber harvest.

4. Eagle/osprey nesting and rearing sites. Nesting and rearing sites used by these species in the vicinity of Deadwood Reservoir may be adversely affected by a timber sale.

5. Threatened and Endangered Species. The Idaho Mountain Primrose may exist within the project area.

6. Water quality in the Deadwood River. Management activities on tributaries of the Deadwood River may affect its designation as a "stream segment of concern."

7. Shaded fuelbreaks. Shaded fuelbreaks, which were specified for use on the original Trail Creek Environmental Assessment, may no longer be of significant benefit for fire protection. The original brush disposal (BD) plan for the project area needs review for current standards and technology.

8. Cultural resources. A cultural resources survey will have to be completed for the project area.

9. Visual quality. Current desired future conditions and standards for visual quality within the project area were not addressed in the original EA. Two areas of concern are the viewsheds for the Deadwood Reservoir and the Lightning Ridge Trail.

10. Roadless/wilderness. Harvest prescriptions 6, 7, and 8 are within the Forest's Peace Rock Inventoried Roadless Area. All of the proposed harvest prescriptions (6, 7, 8, 18, 19, 20, 21, 22, and 23) are within the Kostmayer (HR 2213) Congressionally Proposed Wilderness Area. Timber harvest within the roadless/undeveloped areas may reduce wilderness characteristics and preclude the project area from future wilderness designation.

11. Trail usage. A timber harvest could close or damage, or otherwise interfere with, existing trails and trailheads.

12. Road use. Logging truck traffic could conflict with public use of roads which provide access to the Deadwood Reservoir area.

13. Economic feasibility/below cost sale. Careful sale design will be necessary to ensure that the sale yields more benefits than the costs associated with preparation and administration.

The scoping process for this project is intended to further define these and other preliminary issues.

Federal, State and local agencies, potential purchasers, and other organizations and individuals who may be interested in or affected by the

decision are invited to participate in the scoping process. This process includes:

—Identifying significant issues.

—Determining potential cooperating agencies.

—Identifying groups or individuals interested or affected by the decision.

The analysis is expected to take approximately three months.

The draft environmental impact statement (DEIS) is scheduled to be completed and available for public review by June, 1992. The final environmental impact statement and Record of Decision are scheduled to be completed by August, 1992.

Morris Huffman, District Ranger, Lowman Ranger District, Boise National Forest, is the responsible official.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the DEIS should be a specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contents. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to insure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

Dated: January 22, 1992.

Morris D. Huffman,

District Ranger, Lowman Ranger District, Boise National Forest.

[FR Doc. 92-2464 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-11-M.

Wild and Scenic River Suitability Study for Steamboat Creek, Umpqua National Forest, Douglas and Lane Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a legislative environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare a draft legislative environmental impact statement (LEIS) to determine the suitability or non-suitability of Steamboat Creek on the Umpqua National Forest for inclusion into the National Wild and Scenic Rivers System. The Forest Service invites written comments on management of Steamboat Creek and the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by February 29, 1992.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Lee F. Coonce, Forest Supervisor, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon, 97470.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this LEIS should be directed to Nancy Peckman, Interdisciplinary Team Leader, North Umpqua Ranger District, 18782 North Umpqua Highway, Glide, Oregon, 97443, phone (503) 496-3532.

SUPPLEMENTARY INFORMATION: The Omnibus Oregon Wild and Scenic Rivers Act of 1988 amended section 5(a) of the Wild and Scenic Rivers Act (Public Law 90-542, 82 Stat. 910, as amended) to include Steamboat Creek. Section 4(a) of the Act requires that rivers identified in section 5(a) shall be studied to show "* * * the characteristics which do or do not make the area a worthy addition to the system".

The eligible segment flows approximately 24 miles from the East Fork of Steamboat Creek downstream to its confluence with the North Umpqua River. The upper termini of the study area begins at the source of the East Fork in the middle of Section 1, Township 24 South, Range 2 East. Also included are lands generally within ¼ mile from each stream bank. Two outstanding remarkable values have been identified for this area: Fisheries and prehistoric. The Forest Service proposed action is to conduct a study to determine the suitability of Steamboat Creek for Wild and Scenic River designation. Preliminary alternatives will consider designation of the study segment as a Wild and Scenic River, in addition to other alternatives, such as recreation or scenic designations, to protect the river's identified values.

Lee F. Coonce, Forest Supervisor, Umpqua National Forest is the responsible official for preparing the suitability study. Edward R. Madigan, Secretary of Agriculture, U.S. Department of Agriculture, room 200-A, Administration Building, Washington, DC, 20250 is the responsible official for recommending wild and scenic river designation.

Public participation will be especially important at several points during the study process. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, tribes and other individuals or organizations who may be interested in or affected by this project. This information will be used in preparation of the draft LEIS.

Two public meetings will be held at the Umpqua National Forest Supervisor's Office on February 4 and 11, 1992 from 7-9 p.m. An Open House is also scheduled at the Supervisor's Office on February 11, 1992 from 2-7 p.m. The Supervisor's office is located at 2900 NW Stewart Parkway Roseburg, OR.

The draft LEIS is expected to be filed with the Environmental Protection Agency (EPA), and available for public review by May 1992. At that time, copies of the draft LEIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. EPA will publish a notice of availability of the draft LEIS in the **Federal Register**.

The comment period on the draft LEIS will be 90 days from the date the EPA notice appears in the **Federal Register**. It is very important that those interested in the management of the Umpqua National Forest participate at that time.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft LEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft LEIS stage but that are not raised until after completion of the final LEIS may be waived or dismissed by the courts. *City of Angoon*

v. *Hodel*, 803 f. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this project participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final LEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft LEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft LEIS. Comments may also address the adequacy of the draft LEIS or merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions on the National Environmental Policy Act, 40 CFR 1503.3).

After the comment period ends on the draft LEIS, comments will be analyzed and considered by the Forest Service in preparing the final LEIS. In the final LEIS, the Forest Service is required to respond to comments received (40 CFR 1503.4). The final LEIS is scheduled to be completed by October 1992. The Secretary of Agriculture will consider the comments, responses, and consequences discussed in the LEIS, applicable laws, regulations, and policies in making a recommendation to the President regarding the suitability of this river for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: January 28, 1992.

Mark A. Reimers,

Deputy Chief, Programs and Legislation.

[FR Doc. 92-2402 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-11-M

Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302(a). Notice was given to the stockyard owners and to the public as required by section 302(b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

	Facility No., name, and location of stockyard	Date of posting
AL-185	Southern Star Stockyard, Inc, Rogersville, Alabama.	Dec. 2, 1991.
AL-186	Wood's Livestock Market, Ohatchee, Alabama.	Dec. 1, 1991.
DF-102	S & J Villari Livestock, Gumboro, Delaware.	Dec. 18, 1991.
MN-188	Central Livestock Association, Inc. Albany, Minnesota.	Nov. 27, 1991.

Done at Washington, D.C. this 28th day of January, 1992.

Harold W. Davis,

Director, Livestock Marketing Division, Packers and Stockyards Administration.

[FR Doc. 92-2502 Filed 1-31-92; 8:45 am]

BILLING CODE 3410-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Export Administration.

Title: International Import Certificate.

Form Numbers: BXA-645P; EAR Section 786.2.

OMB Approval Number: 0694-0017.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 4,314 hours.

Number of Respondents: 17,252.

Avg Hours Per Response: 15 minutes.

Needs and Uses: This collection of information is the certificate of the U.S. importer to the U.S. Government that he/she will import specific commodities into the U.S. and will not reexport such commodities except in accordance with U.S. export regulations.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 28, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-2481 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-CW

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1992 Census of Transportation, Communications, and Utilities.

Form Number(s): Various.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 276,000 hours.

Number of Respondents: 195,000.

Avg Hours Per Response: 1 hour and 25 minutes.

Needs and Uses: The Census Bureau will conduct the census of transportation, communications, and utilities as part of the 1992 Economic Censuses. The economic censuses are the primary source of facts about the structure and functioning of the Nation's economy. They provide essential information for government, business, and the public. In particular, census results serve as part of the framework for the national accounts; furnish sampling frames and benchmarks for economic surveys; and provide detailed, comprehensive information for use in policy making, planning, and program administration.

The 1992 Census of Transportation, Communications, and Utilities will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of nearly 0.9 million establishments classified in Division E of the Standard Industrial Classification. This sector is comprised mainly of establishments engaged in providing passenger and freight

transportation; communications services; and electricity, gas, steam, water, or sanitary services to the general public or to other business enterprises.

Affected Public: Businesses or other for-profit organizations, non-profit institutions, small businesses or organizations.

Frequency: Every 5 years.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Agency: Bureau of the Census.

Title: Construction Project Report (Private Construction Projects).

Form Number(s): C-700.

Agency Approval Number: 0607-0153.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 12,000 hours.

Number of Respondents: 4,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Form C-700 is one of the three questionnaires used in the Construction Progress Reporting Surveys (CPRS). Statistics from the CPRS become part of the monthly value of new construction put in place series used by government agencies and private companies to monitor the amount of construction work done each month. These statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation. The Census Bureau uses the information collected on the Form C-700 to publish estimates of the dollar value of new construction put in place at nonresidential building projects owned by private companies or individuals. These projects include industrial and manufacturing plants; office buildings; retail and service establishments such as shopping centers and restaurants; religious buildings; private schools and universities; hospitals and clinics; and miscellaneous buildings including recreational buildings, airline terminals, etc.

Affected Public: Businesses or other for-profit organizations, individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 28, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-2487 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-07-F

Foreign-Trade Zones Board

[Docket 79-91]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzone; Hurco Machine Tool Plant, Indianapolis, IN; Extension of Public Comment Period

The comment period for the above case, requesting authority for special-purpose subzone status for the machine tool manufacturing facility of Hurco Companies, Inc., in Indianapolis, Indiana (56 FR 65040, 12/13/91), is extended to March 12, 1992, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions should include 5 copies. Material submitted will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 27, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-2543 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 22-91]

Foreign-Trade Zone 151—Findlay, OH; Withdrawal of Application for Manufacturing for Findlex Corporation

Notice is hereby given of the withdrawal of the application submitted by the Community Development Foundation, grantee of FTZ 151, requesting authority for manufacturing for the auto and golf cart brake parts manfacturing plant for Findlex Corporation in Findlay, Ohio. The application was formally docketed on April 10, 1991.

The withdrawal is requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: January 28, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-2544 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-351-602]

Carbon Steel Butt-Weld Pipe Fittings From Brazil Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on carbon steel butt-weld pipe fittings from Brazil.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jay Camillo or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On December 13, 1991 the Department of Commerce (the Department) published in the Federal Register (56 FR 65041) its intent to revoke the antidumping duty order on carbon steel butt-weld pipe fittings from Brazil (51 FR 45152), December 17, 1986. The Department may revoke an antidumping duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties.

We had not received a request to conduct an administrative review of this order for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)).

On December 30, 1991, McKenna & Cuneo, counsel to the petitioners and Harris & Ellsworth, counsel to Hackney, Inc., an interested party, objected to our intent to revoke this order. Therefore, we no longer intend to revoke the order.

Dated: January 23, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-2545 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-05-M

[A-351-605]

Frozen Concentrated Orange Juice From Brazil; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to requests by petitioner and a respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil. The review covers two producers and/or exporters of this merchandise to the United States and the period May 1, 1990 through April 30, 1991. We preliminarily determine the weighted-average dumping margins for both respondents, Frutropic and Branco Peres Citrus, during this period to be zero.

Because Citrosuco Paulista, Cargill Citrus Ltda., Coopercitrus Industrial Frutesp, and Montecitrus Trading were revoked from the antidumping duty order in the final results of the last review (56 FR 52510; October 21, 1991), we are terminating the review with respect to those four firms. Because Bacitrus Agro-Industria is a subsidiary of Citrosuco Paulista and exports no FCOJ under its own name, we are also terminating the review with respect to Bacitrus. In addition, Citrovale, another company for which a review was requested and initiated, made no sales of FCOJ to the United States during the review period. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Philip Pia or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1991, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (56 FR 23271) of the antidumping duty order on frozen concentrated orange juice from Brazil (52 FR 16426; May 5, 1987). In May 1991, Florida Citrus Mutual, the petitioner, and five respondents requested an administrative review of the order. We initiated the review, covering the period May 1, 1990 through April 30, 1991, on June 18, 1991 (56 FR 27943). Because four respondents, Cargill Citrus Ltda., Citrosuco Paulista, Coopercitrus Industrial Frutesp, and Montecitrus Trading, were revoked from the antidumping duty order in the final results of the last review (56 FR 52510; October 21, 1991), the Department is terminating the review of their sales for this period. Because Bacitrus Agro-Industria is a subsidiary of Citrosuco Paulista and exports no FCOJ under its own name, we are terminating the review with respect to Bacitrus. Citrovale made no sales of FCOJ to the United States during the review period. The Department has now conducted the review for the remaining two companies, Frutropic and Branco Peres Citrus, in accordance with section 751 of the Tariff Act of 1930 (the Act). The final results of the last administrative review were published on October 21, 1991 (56 FR 52510).

Scope of the Review

Imports covered by the review are shipments of frozen concentrated orange juice (FCOJ) from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

United States Price

In calculating the United States price, we used purchase price and exporter's sales price (ESP) as defined in section 772 of the Act. For those sales made directly to unrelated parties prior to importation into the United States, we based United States price on purchase price, in accordance with section 772(b) of the Act. Where sales to the first unrelated purchaser occurred after importation into the United States, we based United States price on ESP, in accordance with section 772(c) of the Act.

Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. ESP was based on the packed delivered price to the first unrelated purchaser in the United States. For purchase price sales, where applicable, we made deductions for Brazilian brokerage expenses, discounts, export taxes, port fees, foreign inland freight and insurance. For ESP sales, we made deductions for discounts, U.S. duty and Customs' fees, harbor maintenance fees, U.S. inland freight and insurance, brokerage and handling expenses, ocean freight and marine insurance, credit expenses and indirect selling expenses. No other adjustments were claimed or allowed.

Foreign Market Value

The Department based foreign market value on third country f.o.b. price, in accordance with section 773 of the Act. We made deductions, were appropriate, for foreign inland freight, marine insurance, and export taxes. Where applicable, we deducted foreign packing expenses and added U.S. packing to home market price (packing costs were not incurred on bulk sales). We adjusted foreign market value for differences in credit expenses. In the case of comparisons to ESP sales, we made an adjustment for indirect selling expenses, limited by the amount of indirect selling expenses incurred in the United States. No other adjustments were claimed or allowed. Where distortions would have been created through the use of a monthly foreign market value, we calculated foreign market value for shorter periods. As we have done in previous reviews of this order, each such period begins when there was a significant change in the Minimum Export Price.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine the weighted-average margins for the period May 1, 1990 through April 30, 1991 to be:

Manufacturer/exporter	Margin (percent)
Branco Peres Citrus S.A.	Zero
Frutropic S.A.	Zero

Parties to the proceeding may request disclosure within five days and interested parties may request a hearing not later than ten days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.35(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representive's client or employer becomes a party to

the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final results or final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in this administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 and 353.25.

Dated: January 24, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-2546 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-046]

Polychloroprene Rubber From Japan; Determination Not To Revoke the Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Determination not to revoke the antidumping duty finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty finding on polychloroprene rubber from Japan.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION: On December 13, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 65043) its intent to revoke the antidumping finding on polychloroprene rubber from Japan (38 FR 33593, December 9, 1974). The Department offered interested parties an opportunity to comment. The Department may revoke an antidumping finding if the Secretary concludes that the finding is no longer of interest to interested parties. We did not receive a request for administrative review of the finding for the last five consecutive annual anniversary months, and therefore published a notice of intent to revoke the finding pursuant to 19 CFR 353.25(d)(4).

On December 19, 1991, E.I. DuPont de Nemours & Company, Inc., a domestic producer of polychloroprene rubber, objected to our intent to revoke the antidumping finding. Therefore, we no longer intend to revoke the finding.

Dated: January 23, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-2547 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-508]

Porcelain-on-Steel Cooking Ware From Taiwan; Determination Not To Revoke the Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Determination not to revoke the antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on porcelain-on-steel cooking ware from Taiwan.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION: On December 13, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 65042) its intent to revoke the antidumping order on porcelain-on-steel cooking ware from Taiwan (51 FR 43416, December 2, 1986). The Department offered interested parties an opportunity to comment. The Department may revoke an antidumping order if the Secretary concludes that the order is no longer of interest to interested parties. We did not receive a request for administrative review of the order for the last five consecutive annual anniversary months, and therefore published a notice of intent to revoke the order pursuant to 19 CFR 353.25(d)(4).

On December 20, 1991, General Housewares Corp. (GHC), a domestic manufacturer of porcelain-on-steel cooking ware, objected to our intent to revoke the antidumping order. Therefore, we no longer intend to revoke the order.

Dated: January 23, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-2548 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-538-802]

Final Determination of Sales at Less Than Fair Value: Shop Towels From Bangladesh

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–3464.

FINAL DETERMINATION:

Background

Since the publication of our affirmative preliminary determination on September 12, 1991 (56 FR 46411), the following events have occurred.

On September 10, 1991, Eagle Star Textile Mills, Ltd. (Eagle Star) and Sonar Cotton (B.D.), Ltd. (Sonar), respondents in this investigation, requested a postponement of the final determination and also requested a public hearing. Accordingly, we published a notice of postponement of the final determination on September 30, 1991 (56 FR 49458).

On October 9, 1991, petitioner in this investigation, Milliken & Company, requested a public hearing.

We concluded verification of the questionnaire responses between November 2 and 5, 1991, in Bangladesh for the two respondents in this investigation.

Respondents and petitioner filed case briefs on December 11 and 12, 1991, respectively, and rebuttal briefs on December 16 and 17, 1991, respectively. A public hearing was held on December 18, 1991.

Scope of Investigation

The product covered by this investigation is shop towels. Shop towels are absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials. Shop towels are currently classifiable under items 6307.10.2005 and 6307.10.2015 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1990, through March 31, 1991.

Such or Similar Comparisons

We have determined for purposes of the final determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of shop towels from Bangladesh to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price for all companies, in accordance with section 772(b) of the Tariff Act of 1930 (the Act), both because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States and because exporter's sales price methodology was not indicated by other circumstances.

A. Eagle Star

We calculated purchase price based on packed, delivered C&F prices. We made deductions, where appropriate, for foreign inland freight, loading charges, forwarding and brokerage charges, port charges, carrying and handling charges, export charges, and ocean freight, in accordance with section 772(d)(2) of the Act. We adjusted purchase price for information contained in submissions presented after the preliminary determination as well as errors discovered at verification.

B. Sonar

We calculated purchase price based on packed, delivered C&F prices. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, and ocean freight, in accordance with section 772(d)(2) of the Act. We adjusted purchase price for information contained in submissions presented after the preliminary determination as well as errors discovered at verification.

Foreign Market Value

We calculated FMV based on constructed value (CV), in accordance with section 773(e) of the Act, because neither respondent sold such or similar merchandise in the home market or in any third-country market during the POI. The CV includes the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit, and packing.

A. Eagle Star

We used Eagle Star's CV data except in the following instances where the costs were not appropriately quantified or valued:

1. The Department allocated fabrication expenses based on the quantity of yarn consumed in production as a surrogate for the actual quantity of shop towels produced during the POI.

2. Depreciation on idle equipment was included and allocated between product lines on the basis of loom usage.

3. The Department rejected Eagle Star's claim for start-up costs, and therefore used actual costs incurred to produce shop towels.

4. Manufacturing costs were increased to include general depreciation expenses on common assets (boundary walls, general buildings, furniture etc.).

5. General and administrative (G&A) expenses and interest expenses were based on Eagle Star's financial statements and were calculated as a percent of cost of sales. The Department did not calculate an offset to interest expenses for an amount attributed to maintaining accounts receivable because Eagle Star did not have receivables.

6. Eagle Star did not include an amount for credit expense in reporting its U.S. selling expenses. As best information available (BIA), we calculated credit expense using the number of days between the date the merchandise was shipped and the date payment was received. We used a POI interest rate provided by Eagle Star during verification. See Comment 14 in the "Analysis of Comments Received" section of this notice.

We used Eagle Star's actual general expenses in accordance with section 773(e)(1)(B)(i) of the Act, because these expenses exceeded the statutory minimum of ten percent of the cost of materials and fabrication. For profit, we applied eight percent of the sum of the cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because Eagle Star did not have any home market or third country sales on which to compute profit. We used U.S. selling expenses for CV because Eagle Star had no sales of the class or kind of merchandise in the home market or to any third country. We added U.S. packing costs.

Pursuant to § 353.56 of the Department's regulations (19 CFR 353.56), we made circumstance of sale adjustments for differences in credit expenses and inspection fees.

B. Sonar

We used Sonar's CV data except in the following instances where the costs were not appropriately quantified or valued:

1. Factory fabrication expenses were allocated to shop towels based on the ration of looms producing shop towels to the total looms in operation. The

allocated fabrication expenses were divided by the actual kilograms of shop towels produced rather than the standard weight per bale.

2. Depreciation on idle equipment was included and allocated between product lines based on loom usage.

3. The Department included overhead and depreciation expenses which Sonar failed to account for at verification and allocated them to shop towels based on loom usage.

4. G&A and interest expenses were based on Sonar's financial statements and were calculated as a percentage of cost of sales. The Department did not calculate an offset to interest expenses for an amount attributed to maintaining accounts receivable because Sonar did not have receivables.

5. Sonar did not include an amount for credit expense in reporting its U.S. selling expenses. Furthermore, Sonar did not report the date of receipt of payment for a number of its U.S. sales. As BIA, we calculated credit expense using the verified number of days between the date the merchandise was shipped and the date payment was received for those sales where the date of receipt of payment was available. For those sales where date of receipt of payment was not available, we used as BIA, the verified average time between the dates of shipment and receipt of payment for all other sales. We multiplied the result by a publicly available interest rate obtained from the countervailing duty investigation of shop towels from Bangladesh. See Comment 14 in the "Analysis of Comments Received" section of this notice.

We used Sonar's actual general expenses in accordance with section 773(e)(1)(B)(i) of the Act, because these expenses exceeded the statutory minimum of ten percent of the cost of materials and fabrication. For profit, we applied eight percent of the sum of the cost of materials, fabrication, and general expenses, pursuant to section 773(e)(1)(B)(ii) of the Act, because Sonar did not have any home market or third country sales on which to compute profit. We used selling expenses for CV because Sonar had no sales of the class or kind of merchandise in the home market to any third country. We added U.S. packing costs.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments for differences in credit expenses and inspection fees.

Currency Conversion

In our analysis, we normally make currency conversions in accordance with 19 CFR 353.60, using the exchange rates certified by the Federal Reserve Bank of New York. Since the Federal Reserve Bank of New York does not provide exchange rate information for Bangladesh, we used the average exchange rate for Bangladesh for the POI published in the International Monetary Fund's International Financial Statistics.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondents by using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Analysis of Comments Received

We invited interested parties to comment on the preliminary determination in this investigation. We received case and rebuttal briefs from the petitioner and the respondents.

Comment 1

Petitioner notes that during the course of this investigation, Eagle Star has claimed that its expenses should be adjusted for start-up operations. Petitioner assets that Eagle Star does not qualify as a start-up operation because it failed to show that it experienced any increase in efficiency after start-up. Petitioner asserts that low production is not a reason for a start-up adjustment, and in fact Eagle Star's low production was caused by market forces and production problems unrelated to production start-up. Petitioner maintains that shop towel production was simply an addition to related lines of business, and the production operations are so simple that there would be no resulting increase in efficiency after the start-up of operations. Also, petitioner contends that Eagle Star's start-up adjustments are wildly optimistic.

Eagle Star argues that its actual cost of manufacturing and its G&A expenses should be adjusted because it was only in operation for ten months and, therefore, is a start-up operation.

DOC Position

We agree with petitioner. In this case, Eagle Star did experience production problems but, according to its annual report, the problems were resolved prior to the POI. Market conditions, not start up, led to low production. Consequently, no start-up adjustments are appropriate.

Comment 2

Petitioner argues that the Department should use Eagle Star's total corporate financial statements to obtain general depreciation and G&A expenses rather than only the weaving unit's statements because the latter statements did not allocate to the weaving unit any expenses which benefit all of Eagle Star's units.

Eagle Star argues that the Department should accept the G&A and depreciation expenses reported on the weaving unit's audited financial statements rather than base the costs on the Eagle Star "consolidated" financial.

DOC Position

We agree with petitioner. The weaving unit's financial statements were prepared for tax reasons and represent only the incremental costs rather than the full costs of producing shop towels. Therefore, we have used Eagle Star's financial statements and allocated total corporate expenses on a cost of sales basis.

Comment 3

Petitioner contends that Eagle Star should include all indirect selling expenses in its CV calculations.

DOC Position

We agree with petitioner. At verification, it was found that company officials considered movement charges as selling expenses and included such movement charges in the selling expense account. The Department considers these expenses to be company-wide indirect selling expenses. We have, therefore, included them in the CV calculation.

Comment 4

Petitioner argues that Sonar's costs should be increased to account for the actual verified production weight.

Sonar also asserts that the Department should allocate total shop towel fabrication costs over the actual kilograms produced, contending that this would reduce the reported costs.

DOC Position

Consistent with both parties' recommendations, we have allocated total shop towel fabrication costs over actual kilograms produced to determine the actual fabrication costs per kilogram.

Comment 5

Petitioner argues that all of Sonar's production costs should be allocated to shop towels because Sonar does not allocate any fabrication costs to other products in its normal accounting records. However, petitioner contends that if costs are to be allocated among

product lines, the allocation for Sonar and Eagle Star should be based on production volume rather than loom use, as suggested by respondents, because use of production volume is a standard accounting practice when the same machinery is capable of producing a range of products.

Sonar and Eagle Star argue that fabrication and depreciation expenses should be allocated among the products produced. Sonar asserts that loom usage is an appropriate method to allocate fabrication costs because it indicates the amount of time required to process the various products. Sonar maintains that the use of production volume would be inappropriate because shop towels require less processing time per kilogram than the other products.

DOC Position

We agree with respondents. Sonar produced products other than shop towels; therefore, it would be inappropriate for shop towels to bear manufacturing costs incurred to produce other products. In addition, the Department noted at verification that production of shop towels requires less processing time per kilogram of output than the other products produced. Thus, to produce shop towels and other products in equivalent amounts, the respondents did not need to devote as many looms to shop towel production. Since kilogram output in a given amount of processing time varies across product lines, we have determined that the relative processing time required for the various products is a more appropriate allocation basis and that this is best reflected by loom usage.

Comment 6

Petitioner argues that depreciation expenses on idle equipment were expenses that were actually incurred and reported by Sonar and Eagle Star for financial statement purposes. Therefore, these expenses should be allocated to production.

Sonar and Eagle Star argue that depreciation on idle looms should not be allocated to production because the looms will not lose value through obsolescence and were not used to produce shop towels.

DOC Position

We agree with petitioner. Sonar and Eagle Star depreciate all of their idle equipment for financial statement purposes. The depreciation did not relate specifically to any product, but was an expense incurred by the entire production operation. The Department allocated the financial statement expenses to shop towels based on loom usage in the same manner as the other overhead expenses. See Comment 5.

Comment 7

Petitioner argues that Sonar's total overhead expenses should be increased for any overhead expenses which Sonar failed to account for at verification.

Sonar cautions that the Department should be careful not to double count any overhead expenses, and should allocate such expenses among all product lines.

DOC Position

We agree with petitioner that Sonar's total overhead expenses should be increased for overhead expenses which Sonar failed to account for at verification. Therefore, we have included all overhead expenses from Sonar's financial records, and allocated them to shop towels based on loom usage. In doing so, we have been careful not to double count any overhead expenses.

Comment 8

Petitioner argues that Sonar's G&A and interest expenses should be allocated based on period sales.

Sonar argues that its G&A and interest expenses included expenses which were incurred for products that were produced but not sold during the POI. Therefore, some of these expenses should be allocated to the inventory of these other products.

DOC Position

We agree with petitioner. Sonar's G&A and interest expenses were incurred by the company as a whole during the fiscal year. These expenses relate to the firm's overall rather than to sales of a particular product. We have, therefore, allocated Sonar's G&A expenses and interest based on cost of sales, thereby accounting for them in the period in which they were incurred.

Comment 9

Petitioner argues that annual electricity, gas, and water expenses should not be divided in half to determine the six month POI expenses because it believes that shop towel production was higher during the POI.

Sonar argues that its methodology was appropriate and that, if anything, the production may have dropped in the second half of the year, resulting in overstated costs.

DOC Position

We agree that, in theory, electricity, gas and water expenses should vary in proportion to production. However, while Sonar produced additional product lines during the POI, the Department verified that shop towel production itself did not increase during this period. Therefore, any reallocation of annual utility expenses would result in no change to the reported shop towel manufacturing expenses. Accordingly, we have not reallocated these expenses.

Comment 10

Respondents contend that this antidumping investigation was improperly initiated because the petition failed to meet the requirements of 19 U.S.C. 1673a(b) (1). Respondents argue that, since the petition did not allege "the elements necessary for the imposition of the duty" and was not accompanied "by information reasonably available to the petitioner supporting this allegation", the Department erroneously initiated this investigation. Respondents note that the Department initiated this investigation on the basis of the financial statements of only one producer in Bangladesh, and then did not include this producer in its analysis. Respondents maintain that, since the Court of International Trade has held that the loss on financial statements does not constitute sufficient grounds for initiating a cost of production investigation, losses on a financial statement are also insufficient to justify the initiation of an entire antidumping investigation. Respondents cite *Huffy Corporation* v. *United States*, 632 F. Supp. 50 (Ct. Int'l. Trade, 1986).

Petitioner asserts that the initiation of this antidumping duty investigation was proper. Petitioner states that Shabnam was selected as a basis for initiating this case because the company offered the clearest and simplest evidence of dumping, since at the time of initiation the Department could not conclusively establish whether the other companies produced merchandise other than shop towels. Petitioner maintains that the case cited by respondents to support their claim that the Department erred in using Shabnam's financial statements to initiate this investigation is not applicable to this case.

DOC Position

We agree with petitioner. Respondents have confused the requirements of the statute for determining when there is a sufficient basis for initiating an antidumping investigation with the Department's regulatory guidelines for identifying appropriate questionnaire respondents. As the respondents correctly point out, to provide a basis for initiation, a petitioner must show the elements necessary for the imposition of an

antidumping duty supported by information "reasonably available" to the petitioner, in accordance with 19 CFR 353.12(b). In this case, the petitioner presented information showing that a Bangladeshi firm which produced shop towels exclusively and sold such merchandise exclusively in the United States during calendar year 1990 had incurred a loss in the same period. This information was considered sufficient to warrant an investigation not merely because it indicated the company was operating at a loss, but because it was operating at a loss solely due to sales of a single product (the subject merchandise, shop towels) to a single market (the United States). Thus, considering in addition the information provided concerning injury caused by such imports, we determined that the petitioner had presented information in support of the elements necessary for the initiation of an antidumping duty investigation.

Moreover, the totality of the facts presented was distinct from those circumstances in which the Court of International Trade found a financial statement loss to be an insufficient basis for a cost of production investigation. There, the Court questioned the use of financial statements on the ground that an operating loss revealed in such statements may not relate to the cost of production, but instead may be attributable to other factors. These factors, namely a large capital investment and use of complicated accounting procedures, are not present in this case.

Once an antidumping investigation has been initiated, it is applicable to imports of the subject merchandise from the country as a whole. However, there is no statutory mandate that all producers and exporters of the subject merchandise in that country be investigated individually. Therefore, consistent with 19 CFR 353.42, the Department provided questionnaires to the two firms accounting for at least 60 percent of total sales of the merchandise under investigation. It is on the basis of the responses provided by these firms that we are determining there to have been sales at less than fair value.

Comment 11

Sonar contends that sales covered by invoice numbers SCML/48/90 and SCML/49/90 should be excluded from the final analysis, while the sales covered by invoice numbers SCML/86/91 and SCML/87/91 should be included. Sonar maintains that invoice numbers SCML/48/90 and SCML/49/90 were not made pursuant to a letter of credit, but rather according to a contract entered into before the POI. Sonar contends that invoice numbers SCML/86/91 and SCML/87/91 were made pursuant to a letter of credit opened during the POI, but that these invoices were inadvertently omitted from the sales listing.

Petitioner argues that the sales covered by invoice numbers SCML/48/90 and SCML/49/90 should not be excluded from the final analysis. Petitioner maintains that: (1) Sonar has used the date of the letter of credit as date of sale in all other instances; (2) almost all of the bales covered by these invoices were shipped pursuant to a letter of credit opened during the POI; and (3) the terms of sale were not finalized until the buyer opened the letter of credit during the POI. However, petitioner argues that if the Department recognizes the contract date as the date of sale, it should do so for only the 360 bales shipped as samples, not the total amount of bales shipped.

DOC Position

We agree with Sonar. Invoice numbers SCML/48/90 AND SCML/49/90 were verified to be made pursuant to a contract entered into before the POI and are, therefore, being excluded from our analysis. All other sales are being included in our analysis including sales that relate to invoice numbers SCML/86/91 and SCML/87/91.

Comment 12

Sonar contends that the Department should adjust for certain errors relating to ocean freight discovered at verification.

DOC Position

We agree with Sonar and are adjusting for all errors discovered at verification, not just those that relate to ocean freight.

Comment 13

Sonar maintains that there should be no deduction from United States price for marine insurance premiums. Although Sonar acknowledges that it did incur marine insurance on shipments made under invoice numbers SCML/48/90 and SCML/49/90, Sonar asserts that these sales were made prior to the POI. See Comment 11. Also, Sonar states that information obtained at verification clarified that the terms of sale for invoice number SCML/52/90, listed as CIF, were actually C&F. Furthermore, although the letters of credit for two other invoices examined at verification listed the terms of sale as CIF, Sonar claims that this was an error and that there were amendments to these letters of credit which showed the terms as C&F. However, Sonar states that these amendments could not be obtained due to the damage to the records during the cyclone in Bangladesh. Sonar notes that another shipment to one of its customers was cancelled when that customer did not agree to a C&F sales term.

Petitioner argues that Sonar has provided no documentation to prove that sales covered by invoices SCML/48/90 and SCML/49/90 were on a C&F basis. Thus, the Department should include payments of marine insurance for these sales.

DOC Position

We agree with Sonar. The information on the record leads to the conclusion that there were no CIF sales during the POI. Evidence to support this conclusion includes: 1) documents demonstrating that one sale listed as CIF was changed to C&F; 2) documents that show that a shipment was cancelled when a customer did not agree to C&F sales terms; and 3) documents that indicate that all other sales during the POI were on C&F sales terms.

Comment 14

Respondents contend that the Department cannot increase the CV of the shop towels produced by Sonar and Eagle Star by adding an imputed credit expense. Respondents also claim that there is no legal justification for reducing the purchase price for items other than movement charges, merely because the purchase price sales may include a credit expense incurred in the country of exportation. Respondents state that, in the past, the Department has taken the position that the CV should not be based on imputed costs. Both respondents claim that they did not extend credit to their United States customers, did not finance any accounts receivable and incurred no actual credit costs. Furthermore, respondents claim that imputing a credit expense as part of the SG&A expenses has the effect of inflating the statutory eight percent minimum amount for profit. Finally, respondents state that if the Department does decide to impute a credit expense, this expense should be based on information obtained during the verification. Sonar maintains that the Department should use verified information which shows the average period between date of shipment and date of receipt of payment. Sonar maintains that although it was unable to provide payment receipt documentation for every shipment because of the recent cyclone, the documentation on the record establishes that the period between the dates of shipment and

receipt of payment is negligible. Eagle Star maintains that information from the verification should be used to establish date of receipt of payment and the interest rate on loans available to Eagle Star.

Petitioner disagrees with respondents' argument that adjustments for imputed credit expenses are not permissible where the U.S. price is based upon purchase price and foreign market value is based upon CV. Petitioner states that such adjustments are made frequently by the Department. Furthermore, petitioner states that the Department should adhere to its preliminary inputed credit adjustments in the final determination for Sonar, since Sonar's payment receipt documentation is incomplete and therefore unverifiable.

DOC Position

We agree with petitioner that adding an imputed credit expense to CV is reasonable and consistent with past practice (see e.g., Final Results of Antidumping Duty Administrative Review: Certain Valves and Connections, of Brass, for Use in Fire Protections System From Italy (55 FR 8971, March 9, 1990)). Furthermore, in the Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers From Mexico (56 FR 1794, 1798, January 17, 1991), the Department stated that "extending credit on sales represents an opportunity cost to the seller; potential revenues from an immediate cash-for-goods sale are exchanged for the receipt of payment after some extended period. Money that would have been received had the goods been sold for cash up front could have been deposited to accrue interest. It is this additional accrued revenue which is forgone in extending credit. We have, therefore, imputed credit expenses in accordance with 19 CFR 353.56(a)(2)." During verification, Eagle Star voluntarily provided documentation supporting an interest rate available to it in Bangladesh during the POI. We have used this interest rate in our imputed credit calculations for Eagle Star. For imputed credit expenses for Sonar, we used verified data. However, to impute a credit expense for those sales where no information was available to determine the date of receipt of payment, we are using as BIA the verified average time between the dates of shipment and receipt of payment for all other sales. Also, consistent with our standard practice, we agree with respondents that there is no legal basis for reducing purchase price for items other than movement charges, *i.e.*, imputed credit expenses. We have therefore adjusted the FMV for imputed credit expenses.

Comment 15

Respondents assert that the inspection fee should not be added to CV as a surrogate for home market selling expenses. Respondents argue that there is no requirement that general expenses included in CV include selling expenses, unless such expenses are usually reflected in sales of shop towels in Bangladesh. While respondents do not object to the Department's substitution of U.S. general expenses for home market general expenses, respondents claim that inspection fees are relevant only to sales to a particular customer in the United States. However, respondents state that if these inspection fees are added to the CV, the Department should, at a minimum, not add inspection fees in comparisons made with sales where no inspection fees were incurred, as shown in the verification exhibits. Finally, respondents assert that if the inspection fees are added to CV, the Department must then make a sales-specific circumstance of sale adjustment to the FMV.

Petitioner argues that the Department can legitimately conclude that respondents would incur the same sort of inspection fees if shop towels were sold in the home market. Furthermore, petitioner states that these inspection fees cannot be ignored; if they are excluded from CV, petitioner argues that they must be deducted from U.S. price as a direct selling expense.

DOC Position

We agree with petitioner that these expenses cannot be ignored and have determined that these fees constitute a direct selling expense. We have, therefore, included a weighted-average fee in CV. We have also made a sales-specific circumstance of sale adjustment to the FMV by subtracting out the weighted-average fee from all transactions and adding in the actual fee for all applicable transactions.

Comment 16

Sonar argues that it made a clerical error and double counted stamping costs. It requests that the Department reduce the amount of its stitching expenses for a stamping fee that was also included in Sonar's packing expenses.

DOC Position

We agree with Sonar and have deducted the stamping charges from the stitching expenses.

Comment 17

Sonar argues that the Department should not include in CV any of the selling expenses included in Sonar's financial statements because those expenses have been verified as movement charges.

DOC Position

We agree with Sonar and have not included these movement charges in CV.

Comment 18

Eagle Star contends that all shop towels it shipped during the POI should be included in the Department's final analysis. Eagle Star maintains that the information from these shipments, collected at verification, better represents information about the company's pricing practices than the three shipments reported as having been sold within the POI.

Petitioner argues that Eagle Star's claim should be rejected since it is contrary to established Departmental practice and there is no justification to alter this practice in this case.

DOC Position

We agree with petitioner. There is no basis for the Department to change its sales reporting requirements in this investigation.

Comment 19

Eagle Star argues that its manufacturing costs should be allocated to the shop towels which were finished during the POI.

DOC Position

We disagree. Fabrication costs should be allocated to the quantity of shop towels produced during the POI, and Eagle Star's methodology did not account for work-in-process. The Department consequently allocated fabrication expenses based on the quantity of yarn consumed in production.

Continuation of Suspension of Liquidation

In accordance with section 735(d)(1) of the Act, we are directing the United States Customs Service (Customs) to continue to suspend liquidation of all entries of shop towels from Bangladesh, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after September 12, 1991, which is the date of publication of our preliminary determination in the Federal Register.

Customs shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the FMV of the merchandise subject to this investigation exceeds the USP as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Eagle Star Textile Mills, Ltd	42.31
Sonar Cotton Mills (B.D.) Ltd	2.72
All Others	4.60

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration. The ITC will make its determination whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping on shop towels from Bangladesh entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)), and 19 CFR 353.20.

Dated: January 27, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-2549 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge From the U.S.S.R.; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On September 18, 1991 (56 FR 47185), the Department of Commerce initiated an administrative review of the antidumping duty order on titanium sponge from the U.S.S.R. for the period August 1, 1990, through July 31, 1991, for titanium sponge manufactured by Techsnabexport. The Department has now decided to terminate this review.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1991, we received a request from Hi-Temp Speciality Metals, Inc. (Hi-Temp), an interested party, to conduct an administrative review of the antidumping duty order on titanium sponge from the U.S.S.R. for the period of August 1, 1990, through July 31, 1991. Hi-Temp requested that we review imports of titanium sponge manufactured by Techsnabexport. On September 18, 1991, we published a notice initiating that administrative review (56 FR 47185).

On December 9, 1991, Hi-Temp withdrew its request for review. Therefore, we are terminating the review of titanium sponge from the U.S.S.R. for the period August 1, 1990, through July 31, 1991.

This termination of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(a)(5).

Dated: January 24, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-2550 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91-172. *Applicant:* Federal Highway Administration, Pavements Division, HNR-20, 6300 Georgetown Pike, McLean, VA 22102. *Instrument:* Pavement Rut Testing Machine, Model A77. *Manufacturer:* MAP, France. *Intended Use:* The instrument will be used to test and evaluate the performance of asphaltic paving mixtures. *Application Received by Commissioner of Customs:* December 18, 1991.

Docket Number: 91-189. *Applicant:* University of New Hampshire, Electron Microscope Facility, Kendall Hall, Durham, NC 03824. *Instrument:* Electron Microscope Accessories. *Manufacturer:* Hitachi Ltd., Japan. *Intended Use:* The instruments are accessories to an existing electron microscope which is being used for studies of environmental samples such as incinerator ash, treatment plant sludge, etc., in order to provide better understanding of the effects of the effluents on the environment and to find better ways to treat effluents before they enter the environment. These accessories will also be used in courses for the training of seniors and graduate students in structural determination, fractography, and metallography. *Application Received by Commissioner of Customs:* December 11, 1991.

Docket Number: 91-190. *Applicant:* Vanderbilt University, Molecular Biology, Box 1820, Station B, Nashville, TN 37235. *Instrument:* Electron Microscope, Model CM 12. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for basic research into the structure of biological macromolecules and macromolecular assemblies. The overall goals of these studies are determination of the structure of these macromolecules and the relationships between their structure and biological function. This research will contribute to the education of undergraduate, graduate and

postdoctoral students. *Application Received by Commissioner of Customs:* December 11, 1991.

Docket Number: 91–191. *Applicant:* Centers for Disease Control, NCEHIC, Cham 17/2415, Atlanta, GA 30333. *Instrument:* Mass Spectrometer, Model AP III. *Manufacturer:* PE Sciex, Canada. *Intended Use:* The instrument will be used for a variety of analyses, often of components present at trace levels in biological matrices. The focus of the work is on the highly sensitive analysis of cotinine levels in serum samples. *Application Received by Commissioner of Customs:* December 12, 1991.

Docket Number: 91–194. *Applicant:* U.S. Department of Agriculture, APHIS, National Veterinary Services Laboratories, 1800 Dayton Road, Ames, IA 50010. *Instrument:* Electron Microscope, Model CM 10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the study of viruses, bacteria and cellular material to aid in the diagnosis of disease producing agents of animals and determine the quality of normal cell cultures and biological reagents. *Application Received by Commissioner of Customs:* December 17, 1991.

Docket Number: 91–195. *Applicant:* University of Georgia Complex, Carbohydrate Research Center, 220 Riverbend Road, Athens, GA 30602. *Instrument:* Mass Spectrometer, Model API III. *Manufacturer:* PE-Sciex, Canada. *Intended Use:* The instrument will be used to perform mass spectrometry/mass spectrometry and liquid chromatography/mass spectrometry experiments in the following research projects:

1. Determination of the structure of plant cells walls,
2. Determination of the structures of biologically active complex carbohydrates in plants,
3. Determination of the sites of glycosylation in glycoproteins,
4. Peptide sequencing,
5. Oligonucleotide sequencing,
6. Determination of the molecular weights of proteins and glycoproteins.

In addition, the instrument will be used in biochemistry courses for demonstration purposes and to provide hands-on experience in mass spectrometry. *Application Received by Commissioner of Customs:* December 18, 1991.

Docket Number: 91–196. *Applicant:* The University of Connecticut, Department of Physiology and Neurobiology, U–131, 354 Mansfield Road, Storrs, CT 06269–2131. *Instrument:* Electron Microscope, Model EM 910. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used to determine structural and chemical (elemental) information at a microscopic level. The materials to be investigated are primarily biological tissues and cells and occasional samples of organic polymers, metallurgical samples, and geological materials. In addition, the instrument will be used in the courses Beginning and Advanced Electron Microscopy to instruct advanced undergraduate and graduate students in techniques for preparing, viewing and analyzing samples. *Application Received by Commissioner of Customs:* December 18, 1991.

Docket Number: 91–197. *Applicant:* Harvard Medical School, Department of Microbiology and Molecular Genetics, 200 Longwood Avenue, Boston, MA 02115. *Instrument:* Electron Microscope, Model H–7100. *Manufacturer:* Hitachi, Japan. *Intended Use:* The instrument will be used for the following research:

1. Studies of reovirus capsid structure and stability,
2. Subcellular localization of the secretion machinery and the cell division apparatus in *E. coli*,
3. Structure and mechanism of action of HSV–1ICP4,
4. Functional organization of the cell nucleus,
5. Studies on the production and mode of action of microcin B 17 and of cell aging in *E.Coli*,
6. Viruses, viral proteins and virally infected cells.

Application Received by Commissioner of Customs: December 18, 1991.

Docket Number: 91–198. *Applicant:* U.S. Department of Commerce/National Oceanic and Atmospheric Administration, Fluid Modeling Branch, ASMD, M–81 Page Road and I–40, Research Triangle Park, NC 27711. *Instrument:* Fast Response Flame-ionization Detector Hydrocarbon Analyzer System, Model HFR 300. *Manufacturer:* Combustion Ltd., United Kingdom. *Intended Use:* The instrument will be used within the Meteorological wind tunnel of the Fluid Modeling Facility of EPA. The wind tunnel is used for the simulation of the atmospheric boundary layer, primarily flow and diffusion of pollutants in complex situations such as around hills and buildings. Hydrocarbon gas is used as the tracer in these model simulations, and concentration patterns downwind of the source are measured with flame-ionization detectors. *Application Received by Commissioner of Customs:* December 18, 1991.

Docket Number: 91–199. *Applicant:* University of Wisconsin, 750 University Avenue, Madison, WI 53706. *Instrument:* Electron Microscope, Model CM 20. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for near atomic dimensions, defining structure chemistry and morphology with enhanced spatial resolution and sensitivity. The research topics include:

1. Rapid crystallization, gas entrainment and stabilized nano-cavities in metals,
2. Non-random structures in amorphous pure metals,
3. Nucleation of crystal phases in super cooled liquids,
4. Structural and chemical aspects of mineral reactions,
5. Micro-petrographic and crystal chemical detail of volcanic rocks,
6. Correlation of structure and magnetic properties in metamorphic rocks,
7. Characterization of grain boundary structures and chemistry in a variety of superconducting materials,
8. Atomic structures of grain boundaries and interfaces in metal/Ga As contacts,
9. Structure of metal/metal oxide catalysts,
10. Particles—particle aggregation in ceramic membrane filtration,
11. Chemical diffusion, structural change and crystalline nucleation in iron-doped magnesium aluminosilicate glasses.

Application Received by Commissioner of Customs: December 20, 1991.

Docket Number: 91–200. *Applicant:* Veterans Affairs Medical Center, Research Service, 2215 Fuller Road, Ann Arbor, MI 48105. *Instrument:* Electron Microscope, Model CM 10/PC. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for the study of various biological specimens, either from animals (rat or mouse predominantly), or cells grown in tissue culture. These specimens will be examined in the course of pursuing biomedical research investigations. This particular study involves the investigation of the nature and cause of impaired nerve regeneration after injury in aged animals compared to young animals, and will examine specimens of rat sciatic nerve, dorsal root ganglion and spinal cord. *Application Received by Commissioner of Customs:* December 10, 1991.

Docket Number: 91–201. *Applicant:* Western Maryland College, Two College Hill, Westminister, MD 21157. *Instrument:* Rapid Kinetics Apparatus, Model SFA–12M. *Manufacturer:* Hi-Tech Scientific, Ltd., United Kingdom. *Intended Use:* The instrument will be

used for studies of alkyltriazenes, a class of compounds being studied as models of potential anti-cancer drugs. The experiments will involve measuring the very rapid rate of decomposition of alkyltriazenes by ultraviolet spectrocopy. *Application Received by Commissioner of Customs:* December 23, 1991.

Docket Number: 91–202. *Applicant:* Massachusetts Institute of Technology 77 Massachusetts, Avenue, Cambridge, MA 02139. *Instrument:* Crystal Growth Apparatus. *Manufacturer:* Moscow Power Engineering Institute, U.S.S.R. *Intended Use:* The instrument will be used for the growth of single crystals of high temperature superconductor materials. These crystals will be used to study the physics of the high temperature superconductors in an ongoing National Science Foundation funded program. *Application Received by Commissioner of Customs:* December 26, 1991.

Docket Number: 92–001. *Applicant:* The Pennsylvania State University, 202A Steidle Building, University Park, PA 16802. *Instrument:* Spectrofluorimeter, Model DX.17MV. *Manufacturer:* Applied Photophysics, United Kingdom. *Intended Use:* The instrument will be used to conduct fast kinetic experiments. In particular, the rate of formation and dissolution of iron disulfide formation experiment will precede the dissolution experiment in the same reactor. The research is being conducted in connection with coal desulfurization and acid-mine drainage problems. *Application Received by Commissioner of Customs:* January 15, 1992.

Docket Number: 92–002. *Applicant:* Bigelow Laboratory for Ocean Sciences, McKown Point, W. Boothbay Harbor, ME 04575. *Instrument:* Multi-Channel Calorimeter, Model MKIII. *Manufacturer:* Chemlab Instruments, United Kingdom. *Intended Use:* The instrument will be used for investigations of the concentrations of those ionic forms of those elements thought to be essential in the nutrition of marine planktonic algae. *Application Received by Commissioner of Customs:* January 15, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–2551 Filed 1–31–92; 8:45 am]

BILLING CODE 3510–DS–M

National Telecommunications and Information Administration

Meeting, CITEL Subcommittee, Spectrum Planning Advisory Committee

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the CITEL Subcommittee of the Spectrum Planning Advisory Committee (SPAC) will meet on February 10, 1992, and on February 28, 1992 at 9:30 a.m. in room 1605 at the United States Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. Entrance to the building is at 14th Street and Pennsylvania Avenue NW.

The CITEL Subcommittee previously drafted the U.S. proposals for the recent Sixth Inter-American Telecommunications Conference (CITEL–VI). The meeting is open for public observation. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. Other public statements regarding Subcommittee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to the Convener SPAC/CITEL Subcommittee, Mr. William M. Moran, National Telecommunications and Information Administration, room 4716, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone 202–377–1866.

Dated: January 29, 1992.

W. Russell Slye,

Executive Secretary, Spectrum Planning Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 92–2534 Filed 1–31–92; 8:45 am]

BILLING CODE 3510–60–M

Office of General Counsel

[Docket No. 920135.2035]

Request for Comments on Technical Assistance Priorities for Commercial Law Reform in Central and Eastern Europe and the Baltic States

AGENCY: U.S. Department of Commerce.

ACTION: Notice and request for comments.

SUMMARY: This notice describes the Department's activities aimed at assisting Central and Eastern European countries and the Baltic states reform their commercial law and business practices consistent with market economy principles. The notice seeks public comment on these activities from parties interested in commercial developments in the region.

DATES: Comments should be received no later than February 24, 1992.

ADDRESSES: Written comments should be addressed to: Lynn S. West Special Counsel, United States Department of Commerce, 14th & Constitution Ave., NW., Room 5870, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Lynn S. West, Special Counsel, Office of the General Counsel, U.S. Department of Commerce, telephone (202) 377–0490, or Susan Gurley, Eastern Europe Business Information Center (202) 377–2645.

SUPPLEMENTARY INFORMATION: The dramatic political and economic changes in central and east European countries over the past two years, and more recent events in the Baltic states, have facilitated the adoption of market-based reforms in most of the countries of the region. While the pace of reform has varied among the countries, some have made substantial progress in creating a business climate that is attractive to western investors.

These developments have generated tremendous interest by U.S. businesses and potential investors in commercial opportunities in the region. Through its role as the United States government's liaison to the American business community, the Department of Commerce has received thousands of requests for information about the commercial and legal climate in the countries of the region. In particular, prospective American investors, exporters, and importers are eager to learn whether commercial and economic laws and regulations provide a sufficiently attractive environment for

business and whether adequate legal protection exists for their interests in the transactions they may contemplate.

In response to these developments, the Department of Commerce has undertaken a number of initiatives to provide assistance to the countries of the region in understanding the legal underpinnings of a market economy and in developing the necessary reforms. The Department has also undertaken to provide timely information to the American business community on the progress of reform.

For example, in May 1990, the General Counsel of the Department of Commerce led a delegation of general counsels of major U.S. corporations to Poland and Hungary to discuss market economy regulation from the perspective of potential American investors. In April 1991, the Deputy General Counsel led a delegation of U.S. government legal experts to Bulgaria to provide assistance to the Bulgarian government in crafting new commercial laws. In November 1991, a similar delegation visited Albania to discuss possibilities and priorities for future U.S. assistance.

In November 1990, the Department initiated its Central and Eastern Europe Legal Texts Program, which distributes copies of over three hundred business laws and regulations from countries in the region, as well as the Baltic states, to interested parties for a nominal fee. This collection of laws is also available publicly at the Department's Law Library.

The Department has also received a commitment of $2.75 million from the Agency for International Development to provide technical assistance over the next three years to the countries of central and eastern Europe and the Baltic states to develop commercial laws consistent with market economy principals. Assistance will be focused in four particular areas: investment law, commercial dispute resolution, property rights, and government procurement.

REQUEST FOR COMMENTS: The Department of Commerce hereby invites interested individuals to comment by February 24, 1992, on their understanding of the progress of commercial law and regulatory reform in the countries of central and eastern Europe and the Baltic states, including first-hand perceptions, if any, of the problems and weakness in the legal climate for business from the perspective of potential U.S. investors, exporters, or importers. The Department also welcomes comments on the specific needs in these countries for assistance in the areas of investment law and regulation, commercial dispute resolution, protection of property rights, including both real and intellectual property, and rules and procedures relating to government procurement. In addition, the Department seeks comments on appropriate priorities and objectives for such assistance in light of existing private and public sector assistance efforts and activities.

Dated: January 29, 1992.

Wendell L. Willkie II,

General Counsel.

[FR Doc. 92-2486 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-BW

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Textile Products Produced or Manufactured in the Federative Republic of Brazil

January 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: February 4, 1992.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101 published November 27, 1991). Also see **Federal Register** notice 56 FR 12368, published on March 25, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 28, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 19, 1991 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Federative Republic of Brazil and exported during the twelve-month period which began on April 1, 1991 and extends through March 31, 1992.

Effective on February 4, 1992, you are directed to amend further the directive dated March 19, 1991 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted twelve-month limit [1]
Sublevels in the aggregate	
300/301	5,996,617 kilograms.
317/326	16,580,754 square meters.
350	107,310 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-2478 Filed 1-31-92; 8:45 am]

BILLING CODE 3510-DR-F

Cancelling Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs cancelling visa requirements.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and the People's Republic of Bangladesh is being amended to cancel the requirement for an export visa for cotton and man-made fiber textile products in part-Categories 340–Y/640–Y, 341–Y, and 647–T/648–T. Textile products in Categories 340/640, 341 and 647/648 which are exported on and after February 1, 1992 must be accompanied by a properly completed export visa for Categories 340/640, 341 and 647/648, respectively, before entry will be permitted.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 53 FR 46484, published on November 17, 1988; and 54 FR 23510, published on June 1, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 28, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1988, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of Bangladesh which were not properly visaed by the Government of Bangladesh.

Effective on February 3, 1992, you are directed to amend further the November 14, 1988 directive to cancel the requirement for an export visa for shipments of cotton and man-made fiber textile products in part-Categories 340–Y/640–Y [1], 341–Y [2] and 647–T/648–T [3], produced or manufactured in Bangladesh and exported from Bangladesh on and after February 1, 1992. However, all shipments of textile products in Categories 340/640, 341 and 647/648, produced or manufactured in Bangladesh and exported from Bangladesh on and after February 1, 1992 must be accompanied by a properly completed export visa for Categories 340/640, 341 and 647/648, respectively, before entry will be permitted into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–2485 Filed 1–31–92; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

[3] Category 647–T: only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0044, 6203.23.0060, 6203.29.2030, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648–T: only HTS numbers 6104.23.0032, 6104.29.1030, 6104.29.2038, 6104.63.2010, 6104.63.2025, 6104.69.2030, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0052, 6117.90.0046, 6204.23.0040, 6204.29.2020, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.69.2510, 6204.69.2530, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

CONSUMER PRODUCT SAFETY COMMISSION

Senior Executive Service: Performance Review Board; Membership

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of names of members.

SUMMARY: This notice lists the individuals who have been appointed to the Commission's Senior Executive Service Performance Review Board.

EFFECTIVE DATE: February 3, 1992.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207–001.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207–001, telephone 301–504–0980.

Members of the Performance Review Board are listed below:

Carol G. Dawson
Mary Sheila Gall
Thomas W. Murr, Jr.
Warren J. Prunella
Alfred L. Roma
Bert Simson
Jerry G. Thorn

Dated: January 28, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–2527 Filed 1–31–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board's Committee on Technology Options for Global Reach—Global Power: 1995–2020 (Support Panel) will meet on 20–21 February 1992, at HQ AFLC, Wright-Patterson AFB, OH, 8 a.m. to 5 p.m.

The purpose of this meeting is to receive briefings and gather information for the study.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–2451 Filed 1–31–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 18–19 February 1992.

Time: 0800–1700 hours daily.

Place: Pentagon.

Agenda: Members of the 1992 ASB Summer Study, "C2 on the Move" will meet to continue work on the study. The purpose of this Classified meeting is directed to interviews with commanders who participated in Desert Storm and Just Cause. Areas of interest are in both "real world" operational concerns and command and control areas. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be

contracted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–2617 Filed 1–31–92; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates/Time of Meeting: 18–19 February 1992.

Time: 0800–1700 hours daily.

Place: Fort Monroe, Virginia.

Agenda: The Land Warfare Combat Identification 1992 Summer Study Panel of the Army Science Board will meet to receive briefings on the causes of fratricide in Operations Desert Storm, and Just Cause, historical and training settings. Work of the TRADOC–AMC Combat Identification Task Force will be presented. Materiel solutions to reduce fratricide will be discussed. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–2618 Filed 1–31–92; 8:45 am]

BILLING CODE 3710–08–M

Potential Change in Operating Procedures Used by the Department of Army, Military Traffic Management Command, to Obtain and Schedule Commercial Transportation for Passenger Groups

AGENCY: Military Traffic Management Command, DoD.

ACTION: Request for public comment on change in operating procedures and mechanism used to coordinate, schedule and obtain commercial transportation for passenger groups.

SUMMARY: The military Traffic Management Command (MTMC) is considering change in the procedures and methods used to inform the carrier industry of passenger group movement requirements and to receive offers of service from the carrier industry. Under this change, current procedures using facsimile transmissions to communicate with industry will be discontinued effective June 1, 1992. In lieu of facsimile, MTMC will use an electronic value added network (electronic Mail) to obtain and schedule commercial transportation for passenger groups.

DATES: Comments received by March 1, 1992 will be considered in the course of implementing the planned communication system and operating procedures. Comments received after March 1, 1992 will be considered for future system improvements or modifications.

ADDRESSES: Comments should be sent to Commander, Military Traffic Management Command, ATTN: MTPT–P, room 626, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Captain Cohen, (703) 756–1756 or Ms. Glasscock, (703) 756–1579.

SUPPLEMENTARY INFORMATION: MTMC arranges commercial transportation to support the movement of Department of Defense (DoD) sponsored passenger groups, using DoD approved commercial carriers. In recent years MTMC used facsimile transmissions to send passenger group requirements to approved carriers and to receive carrier offers of service. However, the number of carriers desiring to participate in MTMC controlled group passenger business increased to a level where communication by facsimile was no longer feasible, causing MTMC to impose a moratorium on additional carriers using facsimile. To accommodate increased carrier participation and expanded competition, MTMC plans to use a commercial electronic mail service to support simultaneous communications with a large number of DoD approved passenger carriers and carrier agents. This operating concept requires carriers, or their agents, to have access to a computer terminal and to subscribe to a electronic mail service at a nominal cost. More detailed information about computer requirements, electronic mail service and operating procedures are available from MTMC.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–2453 Filed 1–31–92; 8:45 am]

BILLING CODE 3710–08–M

Patent Licenses; non-Exclusive, Exclusive, or partially Exclusive, Expandable Grid For Stabilizing and Undersurface.

AGENCY: U.S. Army Engineers Waterways Experiment Station.

ACTION: Notice of availability for exclusive or partially exclusive licensing of U.S. Patent concerning Expandable Grid for Stabilizing and Undersurface.

SUMMARY: In accordance with 37 CFR 404.7(a)(l)(i) announcement is made of the availability of U.S. Patent 4,797,026 for licensing. This patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Norma E. Logue, United States Army, Corps of Engineers, Waterways Experiment Station, ATTN: CEWES–CT–C, Vicksburg, MS 39180–6199, (601) 634–3076.

SUPPLEMENTARY INFORMATION: The invention involves an expandable sand grid system for confining and stabilizing sand or other ungraded aggregates to form roadways. In roadway applications the grid may incorporate an asphalt wearing surface in the top 0.5 to 1 inch of the sand filled cells to permit truck type traffic with axle loads up to 53,000 pounds. The grids may also be stacked to form walls or revetments. Other significant grid uses include various erosion control applications. The grid is manufactured from strips of high-density polyethylene sheeting which are bonded to each other in an offset relationship such that they form a honeycomb arrangement of double-bell shaped cells when the grid is expanded for field use. In the expanded orientation, each cell has an area of approximately 40 square inches. The sand grid system preferably comprises 60 polyethylene strips each having a thickness of 50 mils, height of 8 inches, and a length of approximately 132 inches. The grid system has a collapsed orientation approximately 3.5 inches thick after manufacture and weights approximately 105 pounds. The relatively small volume of the collapsed grids are ideal for storage and transportability.

Two truck loads of grid material are sufficient for construction of 1 mile of 16-foot-wide single-lane roadway. During field use, the grid is expanded from its 3.5-inch thickness to 20 feet to form a honeycomb arrangement of 561 cells that cover an area 8 by 20 feet. The preferred depth of each confinement cell

is 8 inches. The grid dimensions and material composition can be varied for specific applications.

Under the authority of section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and section 207 of Title 35, United States Code, the Department of the Army, Corps of Engineers, Waterways Experiment Station wishes to license the above United States Patent in an exclusive or partially exclusive manner to any party interested in manufacturing or selling the equipment covered by the above mentioned patent.

Each interested party is requested to submit a proposal for an exclusive or a partially exclusive license. The proposals for manufacturing and selling the equipment covered by the above mentioned patient will be evaluated using the following criteria, Existing Manufacturing Capability, Quality Control/Joint Strength, Cost/Square Foot, Marketing Experience, Royalties, and Small Business.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–2452 Filed 1–31–92; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Finding of No Significant Impact for Closure of Naval Hospital Philadelphia, PA

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared and an Environmental Impact Statement is not being prepared for the proposed closure of Naval Hospital (NAVHOSP) Philadelphia, Pennsylvania. The proposed action includes establishing a temporary Branch Medical Clinic on Naval Station (NAVSTA) Philadelphia, and relocating elements of the Naval Ship Systems Engineering Station (NAVSSES) to existing buildings at NAVSTA Philadelphia.

The new clinic would consist of eleven modular units (trailers) assembled inside Building 133 to provide a medical facility of about 35,000 square feet. Relocation of NAVSSES would only require interior modifications to Building 662. The proposed action does not involve the disposal of NAVHOSP; this action will be the subject of appropriate subsequent environmental documentation.

The Secretary of Defense Commission on Base Closures and Realignments, pursuant to the Base Closure and Realignment Act of 1988 (Pub. L. 100–526), recommended NAVHOSP Philadelphia be closed. The Secretary of Defense accepted and the Congress concurred with the recommendation. In addition, the Congress exempted the closure decision from the provisions of NEPA; however, the provisions of NEPA apply to implementation of closures and realignments.

Given Congressional concurrence to close NAVHOSP, alternatives were examined for providing health care to Navy personnel stationed in the Philadelphia area, including no action, construction of a new medical facility on the grounds of the Philadelphia Veterans Administration Medical Center (VAMC), and establishment of a Branch Medical Clinic at NAVSTA Philadelphia. Under the no action alternative, NAVHOSP would close, NAVSSES would relocate, and no new medical facilities would be provided for Navy personnel in the Philadelphia area. While small medical clinics exist at a number of Navy locations in the Philadelphia area, no Branch Medical facilities exist at NAVSTA. The closure of NAVHOSP will leave Navy personnel at Navy Base Philadelphia without a nearby clinic, which is unacceptable from a health and safety perspective. Construction of a new medical facility on the grounds of the VAMC was initially proposed based on the medical needs projected for Naval Shipyard (NAVSHIPYD) Philadelphia and NAVSTA Philadelphia. However, medical facility requirements for NAVSHIPYD and NAVSTA have reduced with the planned closure of these two Navy bases by 1997, as recommended by the Commission on Base Closures and Realignments, pursuant to the Base Closure and Realignment Act of 1990 (PL 101–510). The proposed action of establishing a branch clinic of NAVSTA is the most practicable means of providing medical support for Navy personnel at NAVSHIPYD and NAVSTA until the closure actions are implemented.

Impacts associated with the proposed action are not significant. The closure of NAVHOSP will not significantly affect physical or biological resources in the area. The hospital building is considered eligible for listing on the National Register of Historic Places by the State Historic Preservation Officer. Additional studies will be conducted to determine whether the hospital and the other 57 buildings on the grounds of NAVHOSP, individually or collectively, are eligible for listing. If eligible, and in compliance with Section 106 of the National Historic Preservation Act, the State Historic Preservation Office, Advisory Council on Historic Preservation, and the Navy will negotiate a memorandum of agreement regarding listed or eligible resources prior to exceeding NAVHOSP. The Navy will ensure that historic structures are maintained and protected against vandalism and deterioration until disposal of the property. At that time, appropriate environmental documentation will be prepared on the possible impacts to these cultural resources.

A preliminary assessment conducted for NAVHOSP concluded that no hazardous wastes sites were present that would pose a risk to human health and safety. Asbestos containing materials are present in buildings on the grounds of NAVHOSP, including the hospital building. Cleanup of asbestos containing materials would occur prior to disposal of NAVHOSP. No impacts from hazardous materials would occur as a result of the closure of NAVHOSP.

Existing buildings at NAVSTA would be used to relocate NAVSSES, and establish the proposed Branch Medical Clinic. No impacts to physical or biological resources would occur at NAVSTA as a result of the proposed action. No impacts to cultural or historic resources listed or determined eligible for listing would occur for this establishment and relocation proposal.

Based on information gathered during preparation of the EA, the Navy finds that closure of NAVHOSP Philadelphia will not significantly impact the environment.

The EA prepared by the Navy addressing this action is on file and may be reviewed by interested parties at the place of origin: Commanding Officer, Northern Division, Naval Facilities Engineering Command, Building 77–L, U.S. Naval Base, Philadelphia, PA 19112–5000 (Attn: Mr. Ostermueller, Code 202.2), telephone (215) 897–6262. A limited number of copies of the EA are available to fill single copy requests.

This Finding Of No Significant Impact will become final in 30 days from the Federal Register publication date. The public is invited to submit comments on the proposed action to the address given above prior to the end of this period.

Dated: January 6, 1992.

Thomas J. Peeling,

Special Assistant for Environmental Planning, Shore Activities Division, Deputy Chief of Naval Operations, (Logistics).

[FR Doc. 92–2448 Filed 1–31–92; 8:45 am]

BILLING CODE 3810–AE–M

CNO Executive Panel; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet February 20, 1992, from 9 a.m. to 5 p.m. in Alexandria, Virginia.

Purpose of this meeting is to review maritime environment issues as they impact naval vessel construction and operation and shore establishment environmental protection. The agenda of the meeting will consist of discussions of key issues related to environmental cleanup and protection of naval facilities.

For further information concerning this meeting, contact: Judith A. Holden, Executive Secretary to the CNO Executive Panel, 4401 Ford Avenue, room 601, Alexandria, Virginia 22302-0268, Phone (703) 756-1205.

Dated: January 22, 1992.

Wayne T. Baucino,

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-2477 Filed 1-31-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Hearing

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of hearing.

SUMMARY: The Council of Chief State School Officers, under contract to the National Assessment Governing Board (NAGB), U.S. Department of Education, is announcing a public hearing. This hearing will be conducted as part of the Council's contract for NAGB for the purpose of developing an assessment framework and specifications for the 1994 National Assessment of Educational Progress (NAEP) Geography Assessment Project. Public and private parties and organizations with an interest in the quality of geography assessment and geography education are invited to present written and oral testimony to the Council.

The hearing will focus on recommendations for the 1994 NAEP geography assessment to be conducted at grades 4, 8, and 12. The results of the hearing are particularly important because they will provide for broad public input in developing the geography assessment framework to be used in the 1994 NAEP. This assessment will be used to measure progress toward the National Education Goal #3, relating to student achievement. This hearing is being conducted pursuant to Public Law 100-297, Section 6(E), which states that "Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialist, local school administrators, parents and concerned members of the general public."

DATES: The date of the public hearing has been set for February 25, 1992 in Washington DC. The hearing will begin at 1:30 p.m. and adjourn at 4 p.m. If necessary, the adjournment time may be extended.

Persons desiring to present oral statements at the hearing shall submit a notice of intent to appear, postmarked no fewer than fourteen (14) days prior to the scheduled meeting date. The scheduling of oral presentations cannot be guaranteed for notices of intent received less than 14 days prior to the hearing.

Notices of intent to present oral statements shall be mailed to: Council of Chief State School Officers, One Massachusetts Avenue, NW., Washington, DC 20001-1431, Attn: Susan Munroe—Public Hearings.

LOCATION: Holiday Inn Governor's House, Washington, DC.

WRITTEN STATEMENTS: Written Statements may be submitted for the public record in lieu of oral testimony up to 30 days after the hearing. These statements should be sent directly to the Council (see aforementioned address) in the following format:

I. Issues and Questions Addressed: Identify the issue(s) and question(s) to which the testimony is directed. For example, "grade 4 geography objectives," or "what constitutes appropriate assessment".

II. Summary: Briefly summarize the major points and recommendations presented in the testimony.

III. Discussion: The narrative should provide information, points of view and recommendations that will enable the Council to consider all factors relevant to the question(s) the testimony addresses. Respondents are encouraged to limit this section of their written statements to five (5) pages. The discussions may be appended with documents of any length providing further explanation.

Written statements presented at the hearing will be accepted and incorporated into the public record. All written statements should follow the above format, as much as it is possible.

HEARINGS OBJECTIVES AND PROCEDURES: The Council seeks participation in the hearing from a wide spectrum of individuals and organizations to receive recommendations regarding the geographic proficiencies, knowledge, skills and strategies, to be assessed at grade levels 4, 8, and 12. The schedule of speakers shall be such as to provide a broad spectrum of viewpoints and interests, while being contained to a practical amount of time. The goal of the hearing is to provide the medium for maximum input and guidance from teachers, curriculum specialists, local school administrators, parents and concerned members of the general public. To assist in this, the Council of Chief State School Officers will give a brief introduction to the project at the hearing, with the majority of the time being devoted to presentations by scheduled speakers. As listed in the "Dates" section above, speakers wishing to present statements shall file notices of intent. To assist the Council in appropriately scheduling speakers, the written notice of intent to present oral testimony should include the following information: (1) Name, address and telephone number of each person to appear; (2) affiliation (if any); (3) a brief statement of the issues and/or concerns that will be addressed; and (4) whether a written statement will be submitted for the record. Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Speakers should plan to limit their total remarks to no more than five (5) minutes.

While it is anticipated that all persons desiring to do so will have an opportunity to speak, time limits may not allow this to occur. The Council will make the final determination on selection and scheduling of speakers.

However, all written statements presented at the hearing will be accepted and incorporated into the public record. Written statements submitted in lieu of oral testimony should be received no later than 30 days after the hearing in order to be included in the public record. Written statements received after this date will be accepted; however, inclusion in the public record cannot be guaranteed.

A staff member from the Council of Chief State School Officers will preside at the hearing. The proceedings will be audiotaped. The hearing will also be signed for the hearing-impaired, and a bilingual speaker (Spanish-English) will be available on site if requests are made in advance.

ADDITIONAL INFORMATION: A draft framework outline for the 1994 assessment and draft assessment

guidelines will be made available to anyone wishing to obtain more specifics on the project. Contact the Council of Chief State Officers at (202) 336–7020.

STEPS AFTER HEARING: The Council will review and analyze all comments and opinions received in response to this announcement. A report of the outcomes of the public hearing will be made available to the public upon request after May 1992.

The results of this public testimony, along with the Council's Geography Consensus committee work, will be used to formulate recommendations on the 1994 geography assessment for the National Assessment Governing Board. The Board, charged with developing the assessment framework and specifications, will take final action on the Council's recommendations in May 1992. The following documents will be forthcoming from these coordinated activities: (1) A framework for the 1994 geography assessment, including geography objectives to guide the 1994 assessment, specifications for the test content, and item specifications; (2) Background variables to be collected, as well as achievement data on a national basis, for example, on students, teachers and schools. Background variables should stress factors that are known to be consistently associated with geographic achievement, those that address distributional or equity issues, and those that are of special salience to policymakers; (3) Recommendations and examples of the format to be used to report assessment and background data in geography; (4) A final report describing the consensus process.

A record of all Council proceedings will be kept at the Council of Chief State School Officers until July 1993 and at the National Assessment Governing Board following that date, and will be available for public inspection.

Dated: January 28, 1992.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary.

[FR Doc. 92–2411 Filed 1–31–92; 8:45 am]

BILLING CODE 4000–01–M

ENDANGERED SPECIES COMMITTEE

Establishment of Date and Location for Public Hearing

AGENCY: Endangered Species Committee.

ACTION: Notice of establishment of date and location for public hearing.

SUMMARY AND DATES: On September 11, 1991, the Bureau of Land Management, Department of the Interior, filed an application with the Secretary of the Interior seeking an exemption from section 7 of the Endangered Species Act that would permit the Bureau to hold timber sales on 44 tracts remaining in the Bureau's 1991 timber sales program in Oregon. See 56 FR 48546, September 25, 1991, the Federal Register notice announcing receipt of the application. In accordance with 16 U.S.C. 1536(g) and 50 CFR 452.03, on October 1, 1991, the Secretary of the Interior made certain threshold determinations concerning the application and concluded that the application qualifies for consideration by the Endangered Species Committee. See 56 FR 54562, October 22, 1991, the **Federal Register** notice announcing the Secretary's determinations.

Under 16 U.S.C. 1536(g)(5) the Secretary, who serves as Chairman of the Endangered Species Committee, normally has 140 days from the date he determines the application qualifies for consideration to conduct an evidentiary hearing to develop the record from which he will prepare a report to the Committee under 16 U.S.C. 1536(g)(4)-(8) and 50 CFR part 452, and to complete the report and provide it to the Committee. However, section 1536(g)(5) permits this 140-day period to be extended upon the mutual agreement of the Secretary and the exemption applicant.

The Secretary of the Interior designated Harvey C. Sweitzer, an administrative law judge, to conduct the evidentiary hearing. The administrative law judge is assisted by the staff of the Endangered Species Committee, which includes the Division of General Law, Office of the Solicitor, Department of the Interior, and the Office of program Analysis, Department of the Interior. The evidentiary hearing, which began on January 8, 1992, and is scheduled to conclude January 30, 1992, is taking place in Portland, Oregon at the Federal Building (Old Bonneville Power Administration Building), 911 Northeast 11th Street, Portland, Oregon 97208. See 56 FR 57633, November 13, 1991, the **Federal Register** notice that appointed the Administrative Law Judge and established the date of the hearing.

Although the evidentiary hearing is all that is required by the Endangered Species Act for purposes of compiling a record for the Committee to review, the Chairman of the Endangered Species Committee has decided that for purposes of receiving background information, it is appropriate under the authority of 16 U.S.C. 1536(e)(7)(A) and 50 CFR 453.04, to provide the public an opportunity to comment on the Bureau of Land Management's exemption application. This public hearing will take place in Portland, Oregon, at the Federal Building (Old Bonneville Power Administration Building), 911 Northeast 11th Street, Portland, Oregon 97208, on February 12 and 13, 1992, beginning at 9:30 a.m. The Federal Building has a comfortable public auditorium which can accommodate approximately 300 people and will be made available to all interested persons effective at 8:30 a.m. on the above dates. A sign-up sheet will be available in the auditorium for those interested in addressing the committee beginning at 9 a.m. on February 12. The Chairman has requested that Mr. Timothy Glidden, Counselor to the Secretary of the Interior, serve as the Chairman of the public hearing. All interested persons are invited to attend and offer their comments. Mr. Glidden has the discretion to set the format and to set time limits. Due to the large number of expected witnesses, Mr. Glidden anticipates allowing approximately five minutes per witness.

The Endangered Species Act permits the Committee to take into account other testimony in addition to the evidentiary record and report. See 16 U.S.C. 1536(7)(h)(1)(A) and 50 CFR 453.03(a)(1). The comments received at the public hearing will be transcribed and made available for public inspection. In addition, the transcript will be given to the Endangered Species Committee as background information. The testimony will not be subject to cross examination or to other tests of evidence as was the case with the testimony admitted into the evidentiary hearing record.

FOR FURTHER INFORMATION CONTACT: Copies of the exemption application may be inspected without change and may be obtained for a fee of $221.00 at the Natural Resources Library, 1st Floor, Department of the Interior, 1849 C St., NW., Washington, DC 20240. The Administrative Record can also be reviewed at the Library, from 1 p.m. until 5 p.m. Monday through Friday. In addition, copies of the application are being offered for sale by the Superintendent of Documents, and will also be available for examination free of charge at all U.S. Government Depository libraries. Further, the application and the Administrative Record can be reviewed in Portland, Oregon, at the following location from 8–11 a.m. and 1–3 p.m. Pacific Time: Office of Environmental Affairs, Department of the Interior, 500 NE Multnomah Street, suite 600, Portland, Oregon 97232–2036. Because of the small size of the reviewing facility, persons wishing to review the documentation

should telephone that facility at (503) 231–6157 or FTS 429–6157 to establish a time for the review.

SUPPLEMENTARY INFORMATION: Persons interested in offering their comments at the hearing should keep the following in mind. In order to grant an exemption the Endangered Species committee must make positive findings on the following criteria as they relate to the proposed BLM agency action of conducting the 44 timber sales:

(1) There are no reasonable and prudent alternatives to the agency action;

(2) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(3) The action is of regional or national significance; and

(4) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources with respect to the agency action that had the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures that would not violate section 7(a)(2) of the Endangered Species Act.

John E. Schrote,

Assistant Secretary—Policy Management and Budget and Staff to the Chairman, Endangered Species Committee.

[FR Doc. 92–2676 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF ENERGY

San Francisco Field Office

Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Grant Solicitation Announcement for Laser Fusion Research Applications.

SUMMARY: U.S. Department of Energy (DOE), San Francisco. Field Office (SF) announces that it plans to conduct a technically competitive solicitation for basic research experiments in high energy density studies at the National Laser User's Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics (UR/LLE). Universities or other higher educational institutions, private sector not-for-profit or for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the FY93 cycle of this program is $700,000 and multiple awards are anticipated. These awards are contingent upon the availability of the laser facilities at UR/LLE.

ADDRESSES: U.S. Department of Energy, San Francisco Field Office, 1333 Broadway, Oakland, CA 94612.

FOR FURTHER INFORMATION CONTACT: James H. Solomon of the DOE San Francisco Field Office, Contracts Management Division, telephone 510/273–7117.

SUPPLEMENTARY INFORMATION: GRANT SOLICITATION NUMBER: DE–PS03–92–SF19241.

The actual work to be accomplished will be determined by the experiments that are selected for award. Proposed experiments will be evaluated and ranked through scientific peer review against predetermined, published and available criteria. Final selection for awards will be made by the DOE from among the top ranked applications. It is anticipated that multiple grants will be awarded within the available funding. The unique resources of the NLUF are available to scientists for state-of-the-art experiments primarily in the area of inertial fusion and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, material science, and biology and chemistry will be considered on a second priority basis. The LLE was established in 1970 to investigate the interaction of high power lasers with matter. Available at the LLE for NLUF researchers is the OMEGA laser, a trillion watt, 24-beam laser system (at 0.35 um) and the Glass Development Laser (GDL), a 250 billion watt, single beam prototype for OMEGA (at 0.35 um). the NLUF offers the capability for laser-matter interaction experiments or for using short (100 picosecond) pulses of laser light, X-rays, or neutron for probing the structure of matter. More technical information about the facilities and potential collaboration at NLUF can be obtained from: Dr. James Knauer, Manager, National Laser User's Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623.

The solicitation document contains all the information relative to this requirement for prospective applicant. The solicitation is targeted for release in Mid-February 1992. Recipients of the NLUF solicitation during the last (FY92) cycle of the program will automatically be sent a copy of the solicitation.

Sarah Eary,

Chief, MSO/DP/ER Branch, Contracts Management Division.

[FR Doc. 92–2521 Filed 1–31–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. EA–95]

Application by Maine Public Service Company, Alternative Energy, Inc. and Northeast Empire Limited Partnership #2 for Authorization to Transmit Electric Energy to a Foreign Country

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to transmit electric energy across the international border between the U.S. and Canada.

SUMMARY: Maine Public Service Company (MPSC), Alternative Energy, Inc. (AEI) and Northeast Empire Limited Partnership #2 (the Partnership) (collectively the Applicants) have applied to the Office of Fossil Energy of the Department of Energy (DOE) for authorization to transmit electric energy to Canada. The energy will be generated by the Beaver-Ashland Project (Beaver-Ashland) and will be transmitted across the international border via an existing 138-kV electrical interconnection between MPSC and the New Brunswick Electric Power Commission (NB Power).

DATES: Comments, protests or requests to intervene must be submitted on or before March 4, 1992.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. Docket Number EA–95 should appear clearly on the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT: Warren E. Williams (Program Office), 202–586–9629 or Lise Howe (Program Attorney) 202–586–2900.

SUPPLEMENTARY INFORMATION: On January 6, 1992, MPSC, AEI and the Partnership applied to the Office of Fossil Energy of the DOE pursuant to section 202(e) of the Federal Power Act for authorization to transmit electric energy from the U.S. to Canada as part of a transaction that ultimately will result in redelivery of the electric energy back into the U.S. for consumption in the State of Maine.

The Partnership, a Maine limited partnership, was formed for the single purpose of constructing and owning a wood-fired small power production facility, known as Beaver-Ashland, to be located in Ashland, Maine. Construction of the project is expected to begin by the

end of the first quarter of 1993 and the facility is scheduled to generate electric energy from 1993 until December 31, 2021.

The Partnership will sell to Central Maine Power (CMP) 31,000 kilowatts of electric power which will be generated by the Beaver-Ashland facility, which is located in the service territory of MPSC.

The electric energy to be delivered to CMP will be transmitted from Ashland, Maine, through the utility system of MPSC, to NB Power in New Brunswick, Canada, as part of a transaction that will result in redelivery of the electric energy by NB Power to Maine Electric Power Company, which will wheel the power to the buyer, CMP. No electric energy from Beaver-Ashland will be sold in Canada.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the rules of practice and procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with:

Stephen A. Johnson, General Counsel, Maine Public Service Company, 209 State Street, P.O. Box 1209, Presque, Maine 04769

Lyndon Taylor, Attorney, Skadden, Arps, Slate, Meagher & Flom, 1440 New York Avenue, NW., Washington, DC 20005

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the reliability of the U.S. electric power supply system.

Before an authorization can be issued, the environmental impacts of the proposed DOE action (i.e., granting the authorization, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, nonadversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action.

Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, room 3F–070, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 28, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2525 Filed 1–31–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–112–NG]

GasMark, Inc; Application To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada and Other Countries

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas, including liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on December 20, 1991, of an application filed by GasMark, Inc. (GasMark) for blanket authorization to import and export up to 200 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year period commencing with the date of first import or export. GasMark intends to use existing pipeline and LNG facilities to implement the proposed imports and exports, and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 4, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G–087, FE–53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: GasMark, a Texas corporation with its principal place of business in Houston, Texas, is a marketer of natural gas with the majority of its gas flowing under short- and medium-term marketing arrangements to utility and end-use customers. While the applicant anticipates most proposed transactions would involve the U.S. and Canada, it is requesting authority to import and export gas from and to countries other than Canada. GasMark indicates the authority requested in this docket, if granted, would supersede its existing blanket import authority (DOE/ERA Opinion and Order No. 176, 1 ERA Para 70,705).

The decision on GasMark's application for import authority will be made consistent with DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining

whether it is in the public interest (49 FR 6684), February 22, 1984). In reviewing natural gas export applications, domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested import and export authority. The applicant asserts that this import/export arangement would be in the public interest. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of GasMark's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 23, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2523 Filed 1–31–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–01–NG]

Markwest Hydrocarbon Partners, Ltd.; Application To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas to Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on January 2, 1992, of an application filed by MarkWest Hydrocarbon Partners, Ltd. (MarkWest) requesting blanket authorization to export up to 125,000 MMBtu per day of natural gas over a two-year period beginning with the date of first delivery. MarkWest states that it will advise the DOE of the date of first delivery and submit quarterly reports detailing each transaction. MarkWest would use existing pipeline facilities to implement the proposed exports.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, March 4, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

C. Frank Duchaine, Jr., Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3G–087, FE–53, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: MarkWest, a Colorado limited partnership with its principal place of business in Englewood, Colorado, requests authorization to export natural gas purchased from U.S. producers to Mexican purchasers for varying terms not to exceed one year. All sales would result from arms-length negotiations, and prices would be determined by market conditions.

The export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that there is no current need for the domestic gas that would be exported under the

proposed arrangement. Parties opposing this arrangement bear the burden of overcoming this assertion.

All parties should be aware that if DOE approves this requested blanket export authorization, it may designate a total authorized volume for the two-year term rather than a daily, monthly or annual limit in order to provide MarkWest with maximum flexibility of operation. Based on its requested export authorization of 125,000 MMBtu per day, MarkWest's two year authorization would be 91.25 Bcf of natural gas.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene to notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MarkWest's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January, 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs Office of Fossil Energy.

[FR Doc. 92–2522 Filed 1–31–92; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 91–81–NG]

Salmon Resources Ltd.; Ordering Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order authorizing Salmon Resources Ltd. to import up to 100 Bcf of Canadian natural gas over a two-year period beginning on the date of first delivery after February 14, 1992.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 24, 1992.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–2524 Filed 1–31–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of December 20 Through December 27, 1991

During the Week of December 20 through December 27, 1991, the appeals and applications for exception or other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 28, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 20 through December 27, 1991]

Date	Name and location of applicant	Case No.	Type of submission
December 23, 1991.	American Industrial Contractors, Inc. Albuquerque NM.	LFA–0173	Appeal of an information request denial. If granted: American Industrial Contractors, Inc. would receive access to DOE information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of December 20 through December 27, 1991]

Date	Name and location of applicant	Case No.	Type of submission
December 23, 1991.	Michael P. Dailey Cumberland, RI	LFA-0174	Appeal of an information Request Denial. If granted: The December 16, 1991 Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded, and Michael P. Dailey would receive access to DOE information.
December 23, 1991.	James L. Schwab Spokane, WA	LFA-0175	Appeal of an information request denial. If granted: The December 11, 1991 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and James L. Schwab would receive access to additional DOE documents concerning the investigation of his "whistleblower" complaint under DOE Order 5483.1A.
December 26, 1991.	Gulf/Miller Oil company Atlantic Beach, FL	RR300-123	Request for modification/rescission in the Gulf refund proceeding. If granted: The February 13, 1991 Dismissal Letter (Case No. RF300-11634) issued to Miller Oil Company would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
December 27, 1991.	Texaco/Lonas Construction Co., Inc. Washington, DC.	RR321-102	Request for modification/rescission in the Texaco refund proceeding. If granted: The July 22, 1991 Decision and Order (Case No. RF321-9242) issued to Lonas Construction Co., Inc. would be modified regarding the firm's application for refund submitted in the Texaco refund proceeding.

REFUND APPLICATIONS RECEIVED

[Week of December 20 to December 27, 1991]

Date received	Name of refund proceeding/name of refund applicant	Case number
12/23/91	Gardner's Clark Station.	RF342-87
12/23/91	Schouten Oil Co. Inc.	RF342-88
12/23/91	Ray's Clark Super 100.	RF342-89
12/23/91	Arlen Fosburgh	RF342-90
12/23/91	Larry's Super 100 Station.	RF342-91
12/23/91	Chuck's Super "100".	RF342-92
12/23/91	Lee Britton Clark	RF342-93
12/23/91	Jack's Clark Station	RF342-94
12/23/91	Michael E. Egan	RF342-95
12/23/91	New Christian Life Fellowship.	RF335-57
12/23/91	Munir's Exxon	RF307-10207
12/23/91	Wayne Circle Exxon.	RF307-10208
12/23/91	Raleigh Tire & Service.	RF304-12668
12/24/91	Lee Apparel Co.	RF335-58
12/24/91	Ed's Clark Super 100 #1308.	RF342-96
12/24/91	Bob's Super 100	RF342-97
12/26/91	Clark Super 100, Donald Hayes.	RF342-98
12/26/91	Hashi Yanaga Super 100 #155.	RF342-99
12/26/91	Martin Donald Zinda.	RF342-100
12/26/91	Ron's Clark Super 100.	RF342-101
12/26/91	Grime Fighter Car Wash.	RF304-12669
12/20/91 thru 12/27/91.	Texaco refund, applications received.	RF321-18134 thru RF321-18153
12/20/91 thru 12/27/91.	Crude Oil, applications received.	RF272-90910 thru RF272-91273
12/20/91 thru 12/27/91.	Gulf Oil refund, applications received.	RF300-18821 thru RF300-19292

[FR Doc. 92-2531 Filed 1-31-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of November 11 Through November 15, 1991

During the week of November 11 through November 15, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

International Association of Machinists and Aerospace Workers, Lodge 1018, 11/13/91, LFA-0158

The International Association of Machinists and Aerospace Workers, Lodge 1018, filed an Appeal from a determination issued by the Acting Assistant General Counsel for General Litigation (AAGC) of the DOE in response to their Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE determined that under an unbroken line of cases decided by the federal courts, letters received by government attorneys from opposing counsel are not inter- or intra-agency documents within the meaning of exemption 5 of the FOIA, regardless of the existence of any possible privileges. The DOE, therefore, found that the AAGC should not have withheld a letter written by an attorney for Maywood, New Jersey, concerning a possible settlement of litigation by Maywood against the DOE. Accordingly, the Appeal was granted in part, denied in part, and remanded for the AAGC to either promptly release the letter or apply other possible FOIA exemptions, such as exemptions 4 or 7, to the letter.

Refund Applications

Atlantic Richfield Company/Mid Continent Systems, Inc., 11/14/91, RF304-4445

The DOE issued a Decision and Order granting a refund to Mid Continent Systems, Inc., (Mid Continent) a reseller and retailer that purchased 256,854,025 gallons of ARCO gasoline and distillates during the consent order period. Mid Continent elected to rely on the mid level presumption of injury and received a maximum refund of $50,000 in principal plus $24,939 in interest. Ordinarily, payment of the refund to the firm would have been withheld because Mid Continent is the subject of an unsatisfied remedial order obligation totalling approximately $1,700,000. However, after the commencement of the enforcement proceeding against Mid Continent, the firm filed a petition for protection under chapter 11 of the Bankruptcy Code. Because the court now exercises exclusive authority over the company's assets and liabilities, including the claims of its creditors, the Mid Continent refund will be issued to the bankruptcy trustee for approximate disbursement in accordance with the instructions of the Bankruptcy Court.

Atlantic Richfield Company/Vangas, Inc., 11/15/91, RF304-12514

The DOE issued a Supplemental Decision and Order concerning five Applications for Refund filed in the Atlantic Richfield subpart V special refund proceeding by Vangas, Inc., a reseller/retailer of natural gas liquid products. In considering the Vangas

Application, the DOE found that in the Getty Oil Company special refund proceeding, wholly-owned subsidiaries of the firm had submitted separate applications and, as a result, received refunds exceeding by $64,881 the refund the entities would have been entitled to receive had they been properly treated as a single firm. Rather than grant a refund in the ARCO proceeding and require that the excessive Getty refund be repaid, the DOE offset the excessive Getty refund against the larger requested ARCO refund. Vangas will receive the remaining ARCO refund amount, $25,844, after the offset. The offset amount will be transferred from the ARCO refund account to the Getty refund account.

Quantum Chemical Corporation/Jones & Murtha Distributing Co., Inc., 11/12/91, RF330–43

The DOE denied an Application for Refund filed by Energy Refunds, Inc., on behalf of the Jones & Murtha Distributing Co., Inc. (Jones & Murtha) in the Quantum Chemical Corporation (Quantum) special refund proceeding. According to the Quantum Implementation Order, on March 25, 1988, Quantum and the DOE entered into a Consent Order to resolve all matters relating to Quantum's compliance with the regulations concerning its sales of natural gasoline during the period August 1, 1973, through January 27, 1981. Quantum's sales of other NGL products were not included in the terms of the Consent Order. Because Jones & Murtha purchased middle distillates, it is not eligible to receive a refund in the Quantum special refund proceeding. Accordingly, the DOE has denied the applicant's Application for Refund.

Reading Company, 11/21/91, RF272–26255

The DOE granted an Application for Refund filed by the Reading Company in the subpart V crude oil special refund proceeding. The Reading Application was opposed by a consortium of twenty-eight states and two territories that claimed Reading, who operated a railroad during a portion of the refund period, was able to employ an automatic fuel cost adjustment factor under a regulatory scheme of the Interstate Commerce Commission to pass through crude oil overcharges. OHA rejected this argument and granted a refund in the amount of $37,645.

Seaco, Inc., 11/14/91, RF272–77329

The DOE issued a Decision and Order denying a refund in the subpart V crude oil special refund proceeding to Seaco, Inc. (Seaco). The denial was based upon the fact that Seaco, a reseller of asphalt emulsion, failed to rebut the presumption against refunds to resellers in this proceeding and consequently was ineligible to receive a refund.

Texaco, Inc./Coker's Pedigreed Seed Co., 11/13/91, RF321–7584

The DOE issued a Decision and Order in the Texaco, Inc., subpart V special refund proceeding concerning an Application for Refund filed by Northrup King Co., on behalf of purchases made by a subsidiary, Coker's Pedigreed Seed Co. The DOE determined that the right to a refund was transferred to Northrup when it purchased Coker's in 1988. The Decision stated that although potential refunds are not explicitly mentioned in the agreement, the language clearly indicates the intent of the prior owners to convey the right to a refund. Accordingly, Northrup was granted a refund equal to its full allocable share. The refund granted to Northrup in this Decision is $343 ($268 principal plus $75 interest).

The True Companies/Empire Gas Corporation, 11/14/91, RF195–3

The DOE issued a Decision and Order considering an Application for Refund filed by the Empire Gas Corporation (Empire) in The True Companies subpart V special refund proceeding. The firm requested a full volumetric refund of $79,740. In order to receive a refund at that level, applicants are required to demonstrate injury. The DOE made specific requests to the firm detailing the two step injury showing, including the submission of (i) banked cost data and (ii) some other data showing the overcharges had not been passed through. However, Empire never submitted complete bank information nor did it file complete information regarding the second step of the injury showing. In the absence of this material, the DOE found that Empire was entitled to a refund at the small claims presumptive level of $5,000, plus accrued interest of $4,747.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Biltrite Inc.	RF272–26760	11/14/91
American Biltrite Inc.	RF272–26760	.....
Atchison County Farmers Union Cooperative et al.	RF272–77458	11/15/91
Atlantic Richfield Company/ Brown and Dowling Arco et al.	RF304–3897	11/13/91
Atlantic Richfield Company/ Corbo's Arco.	RF304–12609	11/14/91
Atlantic Richfield Company/ James Dorsey.	RF304–12613	11/13/91
Atlantic Richfield Company/ Nick's Arco et al.	RF304–12400	11/15/91
Atlantic Richfield Company/ Peters Arco et al.	RF304–4344	11/12/91
Atlantic Richfield Company/ Roberts Cash Carry.	RF304–3647	11/15/91
Streng's Arco Service Station.	RF304–8656	.....
Atlantic Richfield Company/ Thurston Arco.	RF304–12511	11/14/91
Citronelle-Mobile Gathering/ Hudson General Corporation.	RF336–29	11/12/91
Enron Corporation/ Permian Petroleum Co.	RF340–4	11/14/91
Enron Corporation/ U.S. Compressed Gas Co.	RF340–12	11/12/91
Gulf Oil Corporation/ Bole Oil Co., Inc./Allied Oil Co.	RF300–6097	11/12/91
Kay Bole	RF300–8241	.....
Gulf Oil Corporation/J & J Service Station.	RF300–14051	11/12/91
Gulf Oil Corporation/ Kepler's Fuel Co. et al.	RF300–12369	11/13/91
Gulf Oil Corporation/ Robinot Co. et al.	RF300–12063	11/12/91
Monterey Peninsula U.S.D.	RC272–139	11/12/91
Phipps Houses Services, Inc.	RF272–57184	11/15/91
S.E. Rykoff & Co	RF272–27813	11/14/91

Shell Oil Company/ Collins Shell et al.	RF315-00072	11/15/91
Shell Oil Company/ Darrell's Shell et al.	RF315-59	11/12/91
Texaco Inc./ Bushey's Sahara Texaco et al.	RF321-7017	11/12/91
Texaco Inc./ Elkhorn Truck Service.	RF321-8545	11/14/91
Elkhorn Texaco	RF321-17855	
Texaco Inc./ Fidler Concrete, Inc. et al.	RF321-8122	11/13/91
Texaco Inc./ Lawton's Texaco Service.	RF321-17909	11/15/91
Tidewater Inc. & Subsidiaries.	RF272-25366	11/12/91
Tidewater Inc. & Subsidiaries.	RF272-25366	
Transport Desgagnes, Inc..	RF272-73778	11/13/91
Transport Desgagnes, Inc..	RF272-73778	

Dismissals

The following submissions were dismissed:

Name	Case No.
Azalea Road Texaco	RF321-3597
Caprock Texaco	RF321-4510
Davis Texaco	RF321-5057
Decarlo Texaco	RF321-181
Dick Lumoreaux Arco	RF304-3732
Emory & Steve's Texaco	RF321-5031
English Auto Service Center	RF304-9050
Gene Stone's Texaco	RF321-7480
George Wilkins	RF272-76237
Herbert Malarkey Roofing	RF321-17462
Hines Texaco Service	RF321-5048
Joe Mele & Sons Texaco	RF321-17450
John L. Bond, Inc	RF300-11184
Lamb Construction Company	RF272-26201
Miles Texaco Service	RF321-710
Patrick's Service Station	RF300-13681
Revere Copper & Brass, Inc	RF272-77325
Rice Service Station	RF304-3997
Summer Street Texaco	RF321-5037
Tom Adams Texaco	RF321-9601
Triphammer Texaco	RF321-5022
Vito's Arco	RF304-12512

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 27, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-2530 Filed 1-31-92; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of November 18 Through November 22, 1991

During the week of November 18 through November 22, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

United Union of Roofers, Waterproofers & Allied Workers, 11/19/91, LFA-0154

The United Union of Roofers, Waterproofers & Allied Workers filed an Appeal from a Freedom of Information Act (FOIA) determination issued by the Department of energy's Bonneville Power Administration (BPA). In that determination the BPA withheld the names, addresses and Social Security numbers of contractor employees pursuant to Exemption 6 of the FOIA. In considering the Appeal, the DOE found that the justification for withholding the requested information was adequate under the FOIA. Accordingly, the Appeal was denied.

Request for Exception

Local Oil Co., Inc., 11/20/91, LEE-0025

Local Oil Company, Inc. filed an Application for Exception which, if granted, would have relieved the firm of the requirement of preparing and filing DOE Form EIA-782B. The DOE issued a final Decision and Order which denied the exception request on the grounds that the firm had not shown that it experienced a serious hardship or gross inequity as a result of its obligation to file Form EIA-782B.

Refund Applications

Aratex Services, Inc., 11/21/91, RF272-25306, RD272-25306

Aratex Services, Inc. (Aratex) filed an application for refund as an end-user of refined petroleum products in the Subpart V crude oil refund proceeding. The firm's refund claim was based on its purchases of gasoline, lubricants, residual fuel oil, and petroleum-based dry cleaning solvents (mineral spirits), which it used in the rental and maintenance of industrial garments. The Applicant demonstrated the volume of its claims by consulting purchase records and by making reasonable estimates. A group of state governments filed a statement of objection to the firm's claim, and provided econometric evidence concerning the manufacturing and service industries as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that Aratex had been able to pass on the crude oil overcharges to its customers, and found that the States' econometric evidence failed to properly address the individual situation of the Applicant. As in previous decisions, the DOE rejected the States' contention that economy-wide data constituted sufficient evidence to rebut the presumption that end-users such as Aratex were injured by crude oil overcharges. The DOE granted Aratex a refund of $263,404 based on its approved purchases of 329,255,560 gallons of petroleum products. The States' related Motion for Discovery was denied.

Atlantic Richfield Co./Magnatex Corporation, Starr Gas Co., 11/21/91, RF304-12390, RF304-12492, RF304-12493

The DOE issued a Decision and Order in the ARCO Special Refund proceeding concerning two competing Applications for Refund filed by McMickle and Edwards. A refund of $7,170 was originally granted to a firm that identified itself as the Starr Gas Company (Starr), based upon purchases of 6,802,722 gallons of ARCO products during the refund period. The Starr Application stated that there had been no change in ownership of Starr during or since the refund period. Subsequently, an Application for Refund was filed by the Magnatex Corporation (Magnatex) claiming that Starr was a wholly owned subsidiary of Magnatex from 1972 until Starr was liquidated in 1986; the Application also stated that certain assets of Starr had been sold to the West Texas Company. We later discovered that the original application had been filed by West Texas on behalf of Starr. Because the sale of Starr to West Texas involved only assets and because Magnatex successfully demonstrated that the firm owned 100% of the stock of Starr until the corporation's dissolution, a refund of $7,170 ($5,000 in principal and $2,170 in interest) was approved to Magnatex. McMickle and Edwards and West Texas were ordered to repay the refund of $7,170 originally granted to Starr.

Gulf Oil Corporation/Helena Marine Service, 11/22/91, RF300-11199

The DOE has granted an Application for Refund filed by Energy Refunds, Inc. on behalf of Helena Marine Service (Helena) in the Gulf Oil Corporation special refund proceeding. Helena submitted a claim for both its end-use purchases and its reseller purchases. In a previous Decision, the DOE concluded that an applicant cannot receive a refund based on presumption of injury for both its end-use and its reseller gallons. However, since the operations were independent, the DOE granted the applicant a refund using the larger of the presumptions. The total refund granted in this Decision is $19,648.

Shell Oil Co./Alpena Oil Co., Inc., Northwood Oil Co., Inc. 11/21/91, RF315-6515, RF315-6516

The DOE issued a Decision and Order granting two Applications for Refund filed in the Shell Oil Company (Shell) special refund proceeding on behalf of Alpena Oil Co., Inc. (Alpena), and Northwood Oil Co., Inc. (Northwood). Although Alpena and Northwood are currently under common ownership, the two firms requested that their applications be considered separately because they were separately owned and operationally distinct during the refund period. In a limited number of cases, we have granted refunds to two or more related firms under different presumptions of injury when they are so operationally distinct that the cost of preparing an injury showing for each of them would be the same as if they were two entirely unrelated entities. *See Shell Oil Company/Arne Moores Inter City Oil Co., Inc.*, 20 DOE ¶85,719 (1990) (*Arne Moores*); *Gulf Oil Corporation/Jennings-Watts Oil Co., Inc.*, 19 DOE ¶85,305 (1989) (*Jennings-Watts*). Because Alpena and Northwood satisfied the criteria outlined in *Arne Moores* and *Jennings-Watts*, we considered the two applications separately in determining the relevant presumption of injury. Both Alpena and Northwood were entitled to refunds under the $5,000 presumption based upon their respective purchases of 30,510,009 gallons and 33,570,268 gallons of Shell products. The total amount of the refunds approved in this Decision is $14,048 ($10,000 principal and $4,048 interest).

Shell Oil Co., Tank Lines, Inc., Horkey Oil Co., Inc. 11/18/91, RF315-8916, RF315-8917

The DOE issued a Decision and Order granting two applications for refund filed in the Shell Oil Company special refund proceeding by two commonly owned firms: Tank Lines, Inc., and Horkey Oil Company, Inc. Since the two firms are commonly owned, Tank Lines, Inc., indicated that its refund should be made payable to Horkey Oil Company, Inc. Therefore, we combined the purchase volumes of Tank Lines, Inc., and Horkey Oil Company, Inc., in order to determine their full allocable share and the appropriate presumption of injury. Tank Lines, Inc., demonstrated that it purchased 3,180,711 gallons of propane during the consent order period. Similarly, Horkey Oil Company, Inc., demonstrated that it purchased 102,569,919 gallons of motor gasoline and distillates during the consent order period. Thus, their full allocable share is 105,750,630 gallons (3,180,711 gallons plus 102,569,919 gallons), which falls under the medium-range presumption of injury. Accordingly, Horkey Oil Company, Inc., was granted a refund of $405 ($288 principal and $117 interest) on behalf of Tank Lines, Inc. For its own purchases of motor gasoline and distillates, Horkey Oil Company, Inc., was granted a refund of $13,025 ($9,272 principal and $3,753 interest). The total refund granted is $13,430 (comprised of $9,560 in principal and $3,870 in interest).

Texaco Inc./Big Save Texaco, 11/22/91, RF321-7642

The DOE issued a Decision and Order concerning an Application for Refund filed by Big Save Texaco (Big Save) in the Texaco Inc. special refund proceeding. The applicant was an indirect purchaser of Texaco products who was supplied by H. J. Tanner, Inc. (Tanner). Because Big Save provided a monthly schedule of its motor gasoline purchases from Tanner along with sample invoices confirming those figures, the DOE accepted Big Save's gallonage figures. However, the DOE discovered that Tanner had obtained approximately 98 percent of its motor gasoline purchases from Texaco and the remainder from Mobil Oil Corporation. Consequently, the DOE determined that Big Save's volumetric amount should be reduced by two percent. In this Decision, Big Save was granted a refund of $6,440, representing $5,054 principal and $1,386 interest.

Texaco Inc./Imperial Lumber Co., 11/22/91, RF321-17964

The DOE issued a Supplemental Order in the Texaco Inc. special refund proceeding regarding Imperial Lumber Co. (Imperial). In *Texaco Inc./Rancatti's, Garage*, Case No. RF321-6501 *et al.* (October 18, 1991), Imperial was granted a refund of $1,018 based upon its purchases of Texaco refined petroleum products. However, the Decision was returned as unclaimed and the DOE was subsequently unable to obtain a correct address for this applicant. The refund granted to Imperial was therefore rescinded.

Texaco Inc./Marshall's Texaco, 11/19/91, RF321-17918

On June 15, 1990, the DOE issued a Decision and Order in the Texaco Inc. refund proceeding concerning an Application for Refund filed by Marshall's Texaco, a retailer of Texaco products. That refund was based upon the applicant's claim that he operated the retail outlet from May 1978 to January 1981, and the volume of purchases at that location between those dates. Subsequently, the DOE determined that another applicant had operated the station until December 1978. On May 16, 1991, the DOE issued a Decision and Order requiring Robert Marshall, the owner of Marshall's Texaco, to repay that portion of its refund attributable to purchases made before December 1978, and to submit documentary evidence that he operated the station from that date until January 1981. Mr. Marshall failed to make the repayment or submit any documentary evidence. Accordingly, the DOE finds in the present Decision that the entire refund granted to Mr. Marshall should be rescinded.

Texaco Inc./Ray's Texaco, et al., 11/19/91, RF321-4637, et al

The DOE issued a Decision and Order concerning 14 Applications for Refund filed in the Texaco Inc. special refund proceeding. Each of the applicants purchased directly from Texaco and was a reseller whose allocable share is less than $10,000 or an end-user. Two applications included claims for purchases which were made indirectly through a Texaco supplier. The DOE had previously determined that indirect purchasers should be considered under procedures established for direct purchasers if their suppliers had not demonstrated injury. Accordingly, these purchases were considered with the direct purchases. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $30,652 ($23,939 principle plus $6,713 interest).

Refunded Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference

Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/ C&T ARCO.	RF304–12612	11/22/91
Atlantic Richfield Company/ Logan Valley ARCO *et al.*	RF304–4821	11/21/91
Altantic Richfield Company/R & R Service Inc. *et al.*	RF304–10125	11/19/91
Altantic Richfield Company/ Sinkler, Inc..	RF304–12618	11/18/91
Citronelle-Mobile Gathering/ American Cyanamid Company.	RF336–14	11/20/91
City of Brady.....	RFRF272–66551	11/19/91
Eklof Marine Corporation *et al.*	RF272–341	11/18/91
Gulf Oil Corporation/ Bobby's Gulf *et al.*	RF300–11707	11/20/91
Gulf Oil Corporation/ Denton Public School *et al.*	RF300–12842	11/18/91
Gulf Oil Corporation/ Haney's Automotive & Gulf.	RF300–18146	11/19/91
Gulf Oil Corporation/ Haworth Oil Company.	RF300–13316	11/18/91
Gulf Oil Corporation/ Holmes Oil Company, Inc..	RF300–21	11/18/91
Gulf Oil Corporation/ Martin Marietta Corp. *et al.*	RF300–11704	11/18/91
Gulf Oil Corporation/ Pelican Gulf Service *et al.*	RF300–14000	11/21/91
Lee Hy Paving Corp..	RF272–82	11/20/91
Phipps Houses Services, Inc..	RF272–50568	11/21/91
Phipps Garden Apartments.	RF272–78611	.....
Sutton Terrance...	RF272–78612	
Reliance Electric Company	RF272–24471	11/20/91
Reliance Electric Company	RF272–24471	.....
Reliance Electric Company.	RF272–24471	.....
Saco Defense, Inc.	RF272–73775	11/20/91
Shell Oil Company/ King Oil Company, Inc..	RF315–8920	11/21/91
Texaco Inc./ Berry Oil & Tire Company *et al.*	RF321–10029	11/20/91
Texaco Inc./ Bob's Texaco *et al.*	RF321–857	11/21/91
Texaco Inc./ Buskrud Oil Co. *et al.*	RF321–12564	11/18/91
Texaco Inc./ Chancellor's Texaco.	RF321–17945	11/21/91
Texaco Inc./ Charlie's Texaco of Norfolk *et al.*	RF321–2215	11/22/91
Texaco Inc./ City of Cincinnati *et al.*	RF231–10101	11/20/91
Texaco Inc./ Eller Texaco *et al.*	RF321–11500	11/19/91
Texaco Inc./ Industrial Raw Materials Corp. *et al.*	RF321–12147	11/18/91
Texaco Inc./ Mike Burkholder Oil Co., Inc..	RF321–6418	11/20/91
Willis Oil Co.....	RF321–8145	.....
Alvin B. Craig.....	RF321–8166	.....
Texaco Inc./ Robert E. Way *et al.*	RF321–9335	11/18/91
Texaco Inc./ Woodall's Texaco Service *et al.*	RF321–3258	11/18/91
Tulare City Elementary School District.	RF272–78897	11/22/91
Lowndes County School District.	RF272–78899	.....
Lakeville School District.	RF272–78935	.....
Vernon Paving Co..	RF272–73273	11/19/91
Vernon Paving Co..	RF272–73273	.....

Dismissals

The following submissions were dismissed:

Name	Case No.
Bexley Texaco	RF321–3306
Cyprus Minerals	RF272–74238
Fannin's Eastland Texaco	RF321–9043
Fremont City Schools	RF272–90261
International Transportation Service, Inc..	RF272–89137
Mike's Texaco	RF321–11126
North's Texaco	RF321–3147
The Fuller Associates	RF321–12443
Towanda Plaza Texaco	RF321–9044
Wonnall Getty	RF321–3197

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–243, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 23, 1992

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–2532 Filed 1–31–92; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders During the Week of November 25 Through November 29, 1991

During the week of November 25 through November 29, 1991, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

David Dekok, 11/27/91, LFA–0163

The Office of Hearings and Appeals of the Department of Energy (DOE) issued a Supplemental Order correcting and clarifying a Freedom of Information Act (FOIA) appeal decision issued to David DeKok on November 5, 1991. *David DeKok*, 21 DOE ¶ 80,160 (1991). The Supplemental Order corrects DOE's prior directive that the Lawrence Livermore National Laboratory perform a search for records pursuant to the FOIA, and addresses that directive instead to the DOE Field Office, San Francisco. It also contains information concerning the DOE's Emergency Operations Center, that was obtained subsequent to the November 5, 1991 Decision.

Refund Applications

Gulf Oil Corporation/Empire Gas Corporation, 11/25/91, RF300–10104

The DOE issued a Decision and Order considering an Application for Refund filed by Empire Gas Corporation in the Gulf Oil Corporation special refund proceeding. The firm requested a full volumetric refund of $78,396, and in order to receive a refund at that level it was required to prove injury. The DOE made specific requests to the firm detailing the two step injury showing, including (i) banked cost data and (ii) some other data showing that overcharges had not been passed through. However, the firm never submitted complete bank information, and it never filed complete information regarding the second step of the injury showing. Although the DOE determined that the firm had not demonstrated injury at the full volumetric level, the DOE found that Empire was entitled to a refund at the mid-range presumptive level. Accordingly, the firm was granted a refund of $31,358, plus interest of $17,639.

Marathon Petroleum Co./Mid-Continent Systems, Inc., 11/26/91, RF250–2500, RF250–2501

The DOE issued a Decision and Order considering an Application for Refund filed by Mid-Continent Systems, Inc. in the Marathon Oil Company special refund proceeding. The firm requested a full volumetric refund of $34,741, and in order to receive a refund at that level it was required to prove injury. In connection with the injury showing, the DOE requested that the firm provide detailed and comprehensive banked cost data. However, the firm never submitted complete bank information. Although the DOE determined that the firm had not demonstrated injury at the full volumetric level, the DOE found that it was entitled to a refund at the midrange presumptive level. Accordingly, the firm was granted a refund of $15,699, plus interest of $8,121 for its Marathon motor gasoline purchases, and $67 in principal and $35 in interest for its purchases of Marathon middle distillates. The total refund was therefore $23,922. Mid-Continent has an unpaid DOE remedial obligation and is involved in a bankruptcy proceeding. The DOE therefore directed that the refund be paid to the trustee in bankruptcy.

National Lime & Stone Co., 11/27/91, RF272–77399

The DOE issued a Decision and Order granting a refund from the crude oil overcharge funds to National Lime & Stone Company (National), a firm represented by Petroleum Funds, Inc. (PFI). Because the DOE requires all PFI applicants to substantiate PFI's extrapolation of their purchases, National provided estimates based on 1973–1981 production records and 1974 and 1988–1990 fuel consumption records. The DOE granted National a refund of $5,742.

Shell Oil Co./Ohio Edison Co., 11/29/91, RF315–8990

The DOE issued a Decision and Order concerning the Application for Refund filed in the Shell Oil Company special refund proceeding by the Ohio Edison Company. A public utility, the Ohio Edison Company has certified that it will notify its state regulatory agency (Public Utilities Commission of Ohio) of any refund received and that it will pass through the amount of the refund to its customers through it fuel adjustment mechanism. The total refund granted in this Decision is $1,512 (comprised of $1,076 in principal and $436 in interest).

Shell Oil Co./Quality Oil Co. I, et al., 11/27/91, RF215–6978

The DOE issued a Decision and Order granting nine Applications for Refund filed in the Shell Oil Company (Shell) special refund proceeding on behalf of Quality Oil Company I (Quality) and its subsidiaries and affiliates. The OHA treated these applications as affiliated applications, combining the gallonages claimed in each to determine the relevant presumption of injury. The applicants claimed a total of 639,219,335 gallons of Shell products and were granted a maximum mid-level presumption refund of $50,000, plus $20,240 in interest.

Texco Inc./Shop & Gas Stores, J.D. & C.P. Boardman Properties, 11/27/91, RF321–3066, RF321–3828

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. special refund proceeding. The application for Shop and Gas Stores was filed by Alonzo Boardman, Inc. a corporation owned solely by Alonzo Boardman. Mr. Boardman was also the majority shareholder in Boardman Oil Company (Boardman Oil), a corporation that had already received a $50,000 refund in the Texaco proceeding. Boardman Oil was the sole supplier of Shop & Gas Stores. Boardman Oil and Shop & Gas Stores were determined to be affiliated and therefore the application on behalf of Shop & Gas Stores was denied. The application for J.D. and C.P. Boardman Properties (Boardman Properties) was filed by Alonzo Boardman's first cousin, Clayton Boardman. Clayton Boardman owned 50 percent of Boardman Properties and was a minority shareholder in Boardman Oil. It was determined that Boardman Oil and Boardman Properties were not affiliated and Boardman Properties was granted a refund of $10,976 ($8,572 principal plus $2,404 interest).

United Refining Co./McNaughton Oil Co., Inc., Steffens Keystone, Montaur Auto Service Co., 11/25/91, RF333–1, RF333–2, RF333–5

The Department of Energy (DOE) issued a Decision and Order granting refunds to three applicants in the United Refining Company (United) special refund proceeding. The applicants purchased refined petroleum products from United between November 1973 and April 1976. The OHA granted these three applicants refunds in the amounts of $2,472, 213 and $290, respectively.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Canopy Centers ARCO *et al.*	RF304–12545	11/26/91
Atlantic Richfield Company/English Auto Service Center *et al.*	RF304–3415	11/26/91
Borough of Girard *et al.*	RF272–62804	11/25/91
Citronelle-Mobile Gathering/Long Island Lighting Company.	RF336–33	11/26/91
Enron Corporation/ Central Butane Gas Company.	RF340–13519	11/29/91
Evanite Fiber Corp., Permaglass Division.	RF272–75900	11/26/91
Gulf Oil Corporation/ Fast Fare Inc.	RF300–12825	11/26/91
Gulf Oil Corporation/ George E. Jarvis, Inc.	RF300–5892	11/27/91
Gulf Oil Corporation/ Tatum Brothers.	RF300–18519	11/29/91
Henderson Community Co-Op Association.	RF272–78537	11/25/91
Iowa Public Service Company.	RF272–65508	11/26/91
Lever Brothers Company, Inc.	RF272–17754 RD272–17754	11/27/91
School District of Three Lakes *et al.*	RF272–63202	11/25/91
Sioux County, Iowa	RC272–140	11/26/91
Texaco Inc./Aurora Maill Texaco *et al.*	RF321–6579	11/29/91
Texaco Inc./Boyd's Texaco *et al.*	RF321–11801	11/26/91
Texaco Inc./Carson's Texaco *et al.*	RF321–43	11/29/91

Texaco Inc./Clar's Texaco *et al.*	RF321–10204	11/25/91
Texaco Inc./	RF321–12854	11/29/91
J&L Texaco Service	RF321–12322	
Foxhoven Service	RF321–12323	
Crook Interstate Texaco.	RF321–12324	
Sterling Interstate Texaco.	RF321–12325	
Atwood Interstate Texaco.	RF321–12326	
Texaco Inc./Gary Zimmer Texaco *et al.*	RF321–12402	11/27/91
Texaco Inc./Guffey's Texaco *et al.*	RF321–9799	11/27/91
Texaco Inc./Tom's Texaco *et al.*	RF321–8341	11/29/91
Texaco Inc./Y Texaco *et al.*	RF321–1300	11/25/91
Uxbridge Public Schools *et al.*	RF272–82803	11/26/91

Dismissals

The following submissions where dismissed:

Name	Case No.
Axselle's Gulf Service	RF300–17889
Benton's Texaco	RF321–7842
Benton's Texaco	RF321–7841
Bud Hernet's Texaco Service	RF321–906
Buena Point Service	RF321–2382
Burkholder's Texaco #1	RF321–6486
Burkholder's Texaco #2	RF321–6487
D&C Enterprises	RF321–10254
Denny GLO Corporation	RF304–11606
Holland Texaco	RF321–1049
Hunter's Gulf Service	RF300–17885
Jenkins West End Texaco	RF321–14364
Johnson's Texaco of Renton	RF321–3722
Keith's Texaco on Boston	RF321–8053
Keith's Texaco on Marion	RF321–8052
Mallow Oil Company	RF300–17926
Maple Avenue Exxon	RF307–10192
Martin Oil Company	RF300–17927
Northlake Texaco	RF321–17129
Oakley Avenue Gulf	RF300–14229
Phillips Grocery	RF300–17877
Renners Express, Inc	RF300–12897
Riverton, WY	RF272–84618
Simco Texaco 2	RF321–14404
Valley Fuel Co., Inc	RF304–11482

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 23, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92–2533 Filed 1–31–92; 8:45 am]

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Issuance of Decisions and Orders During the Week of December 30, 1991, Through January 3, 1992

During the week of December 30, 1991, through January 3, 1992, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Anne S. Kelley, 12/31/91, LFA–0165

Anne S. Kelley filed an Appeal from a denial by the Richland Field Office (Richland) of the DOE of a request for records which she had submitted under the Privacy Act. In considering the Appeal, the DOE found that Richland had conducted an adequate search for security records subject to the Privacy Act concerning Ms Kelley that would be under the control of the DOE or the Westinghouse Hanford Company, a price contractor of the DOE. Accordingly, the Appeal was denied.

International Brotherhood of Electrical Workers, Local Union No. 575, 1/3/92, LFA–0170

The International Brotherhood of Electrical Workers, Local Union 575, Portsmouth, Ohio, (IBEW) filed an Appeal from a determination issued by the DOE Field Office, Oak Ridge (DOE/OR), in response to a request for information submitted by the IBEW under the Freedom of Information Act (FOIA). The IBEW had requested a copy of the certified payroll records of Jess Howard Electric for the Duct Bank Job Project #34306 and the apprenticeship registration form for Jess Howard. Pursuant to the contract between the DOE and Martin Energy Systems (MMES), the Managing and Operating Contractor for the DOE's Portsmouth Enrichment Site, the certified payroll records were contractor records (*i.e.*, property of the contractor). With respect to the apprenticeship registration form, the Appellant and DOE/OR stated that it is a form required to be submitted not to the DOE, but to the Department of Labor. Moreover, a search of both the DOE/OR and the DOE's Portsmouth Enrichment Site Office files confirmed that the DOE did not have possession of these records. The DOE thus found that the documents sought by the Appellant were not "agency records" for purposes of the FOIA. The Appeal was accordingly denied.

Request for Exception

Fortmeyer's Inc., 12/30/91, LEE–0031

Fortmeyer's Inc. filed an Application for Exception from the requirement of the Energy Information Administration (EIA) that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, the exception request was denied.

Quad States Distributing, Inc., 1/2/91, LEE–0026

Quad States Distributing, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the Request, the DOE rejected the firm's assertion that data regarding it was irrelevant to the petroleum products reporting program and found that the firm was not adversely affected by the reporting requirement in a way that was significantly different from the burden borne by similar reporting firms. Accordingly, the exception request was denied.

Implementation of Special Refund Procedures

Salomon Inc, 1/2/92, LEF–0033

The DOE issued a Decision and Order Implementing procedures for the disbursement of $83,750,000, plus accrued interest, obtained under the terms of a Consent Order entered into with Solomon Inc (Salomon) on September 12, 1990, and finalized on November 13, 1990. The DOE determined that these should be distributed pursuant to subpart V. Purchasers of crude oil from Salomon during the consent order period may file Applications for Refund from the crude oil pool of consent order funds. Applications for Refund must be postmarked by June 30, 1992. Instructions for the completion of refund applications are set forth in the Decision.

Refund Applications

Anchor Continental, Inc., Lawter International, Inc., 1/3/92, RF272–62992, RF272–63545

The DOE issued a Decision and Order considering Applications for Refund filed by Anchor Continental, Inc., and Lawter International, Inc., in the subpart

V crude oil special refund proceeding. Both companies sought refunds based on purchases of a number of different petroleum-based products, including resin oil. In evaluating the refund requests, the DOE reiterated its standard that it would presume that crude oil overcharges were included in the price of any product covered by the Emergency Petroleum Allocation of 1973 (EPAA) and primarily refined from crude oil at a crude oil refinery. The DOE pointed out that resin oil was not among the products covered by the EPAA. It also found that resin oil is produced primarily by catalytic cracking in an olefin cracker, rather than by refining in a crude oil refinery. Accordingly, the DOE concluded that the firm's requests for refunds based on resin oil purchases should be denied. However, based on purchases of refined petroleum products that were explicitly covered under the EPAA, Anchor was granted a refund of $5,808, and Lawter received a refund of $371.

Crown Forest Industries Limited, 1/3/92, RF272–49593, RD272–49593

The DOE issued a Decision and Order denying an Applications for Refund filed by Crown Forest Industries Limited (Crown) in the subpart V crude oil special refund proceeding. The applicant, a Canadian forest products company, had purchased fuel oil for its mill in Canada from Standard Oil of California (Chevron) through a subsidiary, Standard Oil of British Columbia (Chevron Canada). DOE regulations during the period of price controls exempted "export sales" from such controls. 10 CFR 212.53. While the regulations did not define the term "export sales," the DOE found that, based on FEA interpretations of the export sales provisions and the circumstances of the sale of fuel oil by Chevron to Crown, the sales were "export sales" which were exempt from mandatory price controls. If a product was exempt, it is axiomatic that overcharges cannot occur. Accordingly, Crown's Application for Refund was denied. A Motion for Discovery filed by a consortium of States was dismissed as moot.

Ministers Council of American Baptist Churches, USA, 12/31/91, RF272–74878

The DOE issued a Decision and Order considering an Application for Refund filed by the Ministers Council of American Baptist Churches, USA (the ABC), for a refund in the subpart V crude oil special refund proceeding. The Application was filed on behalf of all its member congregations. The ABC did not purchase the refined petroleum products on behalf of its member congregations, but instead was only seeking a refund on their behalf. However, the DOE does not accept claims for direct restitution filed on behalf of classes, associates, or trade groups. Under these circumstances, the Application for Refund was denied.

Quantum Chemical Corporation/Wilcox Oil Co., 1/2/92, RF330–46

The DOE issued a Decision and Order denying an Application for Refund submitted by Wilcox Oil Co. in the Quantum Chemical Corporation subpart V special refund proceeding. On June 1, 1984, the applicant, Billy T. Wilcox, sold all of the corporate stock of Wilcox Oil Co. In such a case, the right to seek a refund is transferred along with the stock sold. Accordingly, Mr. Wilcox is not eligible to receive a refund for Wilcox Oil Co. Therefore, the DOE has denied his Application.

Texaco Inc./Andy's Texaco, Jimmy Texaco Inc., 1/2/92, RF321–14613, RF321–18144

The DOE issued a Supplemental Order in the Texaco special refund proceeding concerning two Applications for Refund filed by separate individuals based upon the refined product purchases of the same retail motor gasoline outlet. In *Texaco Inc./Douglas Texaco*, Case No. RF321–991 (November 9, 1990), Jimmy Doiron was granted a refund of $8,866 based on purchases made by Jimmy Texaco Inc. during the period January 1975 to January 1981. Subsequently, an Application was filed by Edward Anderman on behalf of Andy's Texaco, requesting a refund on the basis of purchases made at the same retail outlet. The request included sales during a time period that overlapped the Jimmy Texaco request. The DOE learned that Mr. Anderman had operated the station from 1956 until he sold it to Mr. Doiron in 1978. The DOE also learned that Mr. Anderman had incorporated Andy's Texaco on February 18, 1975, and transferred the outlet to Mr. Doiron through a sale of stock. The DOE determined that since Mr. Doiron obtained the station through a complete stock transfer, all the rights of the corporation were transferred to him as a result. Therefore, Mr. Doiron is entitled to a refund starting with the incorporation date, February 1975, to January 1981. Mr. Doiron had been granted a refund for one month in which he was not entitled to the refund. Therefore, the DOE directed Mr. Doiron to remit $129 plus the interest that would have accrued had the erroneous payment remained in the escrow account. Mr. Anderman was granted a refund of $1,894 based on purchases made by Andy's Texaco prior to the incorporation data, March 1973 to January 1975.

Texaco Inc./Bob Lemons Texaco, et al., 1/3/92, RF321–6, Et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund in the Texaco Inc. subpart V special refund proceeding. Each of the applicants was an indirect purchaser of Texaco products whose supplier either received a refund under the presumption of injury or indicated in its application that it did not intend to seek a refund based on a demonstration of injury. Therefore, the Applications were considered under the same procedures used to evaluate direct purchase claims. The supplier of two applicants purchased from suppliers other than Texaco. In those cases, the DOE determined that the per gallon volumetric refund amount for those two applicants should be reduced by the percentage of their supplier's motor gasoline that did not originate with Texaco. Each applicant was a reseller whose allocable share was less than $10,000; accordingly, they were not required to demonstrate injury. The sum of the refunds granted in this Decision is $29,395 ($22,855 principal plus $6,540 interest).

Texaco, Inc./Ellis Texaco, Rogers Texaco, 12/30/91, RF321–11892, RF321–12235

The DOE issued a Decision and Order concerning two Applications for Refund filed in the Texaco Inc. subpart V special refund proceeding with respect to a retail outlet that was a direct purchaser of Texaco refined products. One of the applicants, Lemuel Ellis, claimed that he owned the outlet from March 1973 through August 1977 and requested a refund for that period. The other applicant, Ruby Rogers, claimed that her deceased husband, William Rogers, owned the outlet from April 1973 through June 1977 and requested a refund for that period. Based on supplementary information provided by each applicant, the DOE determined that both applicants submitted incorrect information in their original Applications. The DOE found that the outlet was sold by Mr. Ellis to Mr. Rogers in January 1975. Consequently, Mr. Ellis was granted a refund for the period from March 1973 through December 1974. Mrs. Rogers was granted a refund for the period from January 1975 through July 14, 1977. The total of the refunds granted in this Decision is $1,087, representing $845 in principal and $242 in interest.

Texaco Inc./Leo Braito's Texaco, 12/31/91, RF321–18151

On June 15, 1990, the DOE issued a Decision and Order in the Texaco Inc. Subpart V special refund proceeding granting an Application for Refund based upon the refined product purchases of Le Braito's Texaco during the period March 1973 through December 1979. Subsequently, a second Application for Refund was filed based upon purchases of refined products at the same location for a period beginning with December 1978. Upon inquiry, Mr. Leo Braito, the first applicant, informed the DOE that his Application had been in error and that he had sold the Texaco outlet in December 1978 rather than 1979. Accordingly, the DOE determined that Mr. Braito must repay, with interest, that portion of the refund he had received that was attributable to purchases made after December 1978.

The Commonwealth of Massachusetts, 1/2/92, RF272–72465

The DOE issued a Decision and Order concerning an Application for Refund submitted by the Commonwealth of Massachusetts in the subpart V crude oil special refund proceeding. The Commonwealth's Application was based on purchases of refined petroleum products used for transportation, heating, road construction, and road surfacing. Massachusetts was granted a refund of $155,401 based on its purchase of 194,251,065 gallons of gasoline, diesel fuel, and heating fuels.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlanatic Richfield Company/ Herring Service Station *et al.*	RF304–3720	12/31/91
Atlantic Richfield Company/ Ronald J. Baudy Trucking *et al.*	RF304–3758	12/30/91
Atlantic Richfield Company/The Augsbury Corporation *et al.*	RF304–12374	12/30/91
Atlantic Richfield Company/ Vandermoss Dino Service.	RF304–3709	12/31/91
Paul Hepfer Feed, Hardware & Gas.	RF304–3762	
Albany Propane gas Co., Inc..	RF304–10235	
Haniotes Mini Market.	RF304–12552	
City of Burlington, KS.	RC272–152	12/30/91
Enron Corporation/ Union Carbide Chemicals & Plastics Co., Inc..	RF340–39	01/02/92
Gohmann Asphalt & Construction Inc..	RR272–84	12/31/91
Gohmann Asphalt & Construction Inc..	RD272–73790	
Gulf Oil Corporation/ Dowling Fuel Company.	RR300–32	01/03/92
Oelum Corporation.	RR300–80	
Gulf Oil Corporation/ Fast Fare, Inc..	RF300–18823	01/02/92
Gulf Oil Corporation/ Kilgore Gulf.	RF300–11026	01/03/92
Armstrong Gulf Service.	RF300–11026	
Kelran Constructors, Inc..	RF272–74756	01/03/92
W.C. Striegel, Inc..	RF272–74777	
Lansing Board of Water & Light.	RF272–67211	01/02/92
Murphy Oil Corp./ Tenneco Oil Company.	RF309–1307	01/03/92
NDH, Inc.	RF272–62599	12/31/91
NDH, Inc.	RD272–62599	
Orders & Haynes Paving.	RF272–62846	
Orders & Haynes Paving.	RF272–62846	
Pillsbury Company.	RF272–69342	12/30/91
Pillsbury Company.	RD272–69342	
Tesoro Petroleum Corp./J.F. Grossenbacher Oil Co. *et al.*	RF326–124	12/30/91
Tesoro Petroleum Corp./Santa Fe Engineering & Construction Co..	RF326–302	12/30/91
Honeymon Drilling Co..	RF326–303	
Toppers Oil Corporation.	RF326–305	
Texaco Inc./ Bush Oil Co. *et al.*	RF321–13185	01/03/92
Texaco Inc./C.E. & B.F. Duquette Petroleum *et al.*	RF321–40	12/30/91
Texaco Inc./ George Sadatoshi Yoshihara *et al.*	RF321–13506	12/30/91
Texaco Inc./Gill Reiling Service.	RF321–3374	12/30/91
Jim Dickeson	RF321–4314	
Kocian Texaco	RF321–2545	
Texaco Inc./ Jeffers Texaco Service *et al.*	RF321–12713	12/30/91
Texaco Inc./ Plateau Oil Company.	RF321–8872	01/03/92
Plateau Oil Co., Inc..	RF321–11665	
United Industry, Inc. *et al.*	RF272–16593	12/31/91

Dismissals

The following submissions were dismissed:

Name	Case No.
10–10 Truck Stop	RF300–18141
Adams Construction Corporation	RD272–55888
Adams Construction Corporation	RF272–55888
Barnhill's Gulf	RF300–12953
Burton E. Deitz Service Sta.	RF300–12993
Danbigh Gulf	RF300–12846
Danny's Texaco	RF321–11704
David High	RF300–18777
Doyal's Gulf Oil	RF300–17779
E.T. Simonds Construction Company.	RF272–18747
E.T. Simonds Construction Company.	RD272–18747
Eaton Asphalt Paving Co., Inc.	RD272–38399
Eaton Asphalt Paving Co., Inc.	RF272–38399
Fairburn Gulf Service	RF300–12992
Freeman Gulf	RF300–12856
General Asphalt Co., Inc.	RF272–57618
General Asphalt Co., Inc.	RD272–57618
Gernatt Asphalt Products, Inc.	RF272–16373
Grubbs Gulf Service	RF300–12836
Hank's Service Center Inc.	RF300–18524
Howard's Gulf	RF300–12762
Hugo Schulz Inc.	RD272–19838
Hugo Schulz Inc.	RF272–19838
Interchange Gulf	RF300–12772
Jack Morse	RF321–13505
Jack Morse	RF321–13504
Jack Morse	RF321–13503
Jiffy Mart & Stopa Go	RF300–12965

Name	Case No.
John Teeter Coal Co.	RF300-12487
John's Gulf Service	RF300-18150
K.F. Jacobsen & Co., Inc.	RD272-21980
K.F. Jacobsen & Co., Inc.	RF272-21980
Ken Harris Texaco #1	RF321-11604
Kirby's Gulf	RF300-12927
Knight's Gulf	RF300-12963
Michigan Bell	RF300-18763
Ons Gulf	RF300-12955
Post Gulf Service	RF300-12848
Robert J. Quick	RF300-18525
Rollin's Gulf	RF300-12971
Scotch Plains Gulf	RF300-18675
Southeast-Atlantic Corporation	RF300-18363
Standard Construction Company, Inc.	RD272-37241
Standard Construction Company, Inc.	RF272-37241
Stuckey's Store No. 136 (Sycamore, Georgia).	RF321-15309
Tigrett Petroleum	RF300-18423
Village Store	RF300-12827
Walter Dotson Gulf Service Sta.	RF300-12981
Westview Texaco	RF321-11543
Willow Avenue Gulf Service	RF300-18676

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: January 27, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-2529 Filed 1-31-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4093-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.)*, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 31, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) for Portland Cement Industry (Subpart F)—(EPA No. 1051.05, OMB No. 2060-0025).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR part 60.7-60.8 and the specific NSPS, for particulate and visible emissions from Portland cement plants, at 40 CFR part 60.60. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring facility compliance with the NSPS.

Owners or operators of all new facilities subject to this NSPS must provide EPA, or a delegated State or local authority, with:

(1) Notification of the date of construction or reconstruction, (2) notification of the anticipated and actual dates of the start-up, (3) notification of the date of the initial performance test, and (4) a copy of the initial performance test results. Owners and operators of new facilities that must conduct continuous opacity monitoring (COM) will be required to submit: (1) Notification of the COM system demonstration, (2) notification that COM system data will be used during the initial performance test. Facilities that, as an alternative, are permitted to conduct opacity observations using EPA Method 9 must notify EPA of the anticipated date for conducting these observations.

Owners and operators of all facilities must provide EPA, or a delegated State or local authority, with:

(1) Reports, semiannually, of malfunctions and excess emissions; and (2) any physical or operational change to their facility which may result in an increase in the regulated pollutant emission rate. All facilities must also maintain records of the facility operation that document: (1) the occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) initial performance test results; and (3) all visible emissions from continuous opacity monitoring (COM) or, where applicable, from daily observations taken in accordance with EPA Method 9.

Presently there are an estimated 78 subject facilities with an average annual growth of 4.3 new facilities over the next three years. All subject facilities must maintain records related to compliance for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 51 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 279 hours annually.

Respondents: Businesses or other for-profit organizations.

Estimated Number of Respondents: 82.

Estimated Number of Responses Per Respondent: Two.

Estimated Total Annual Burden on Respondents: 31,189 hours.

Frequency of Collection: Semianual reporting for existing facilities, with additional one-time reporting requirements for new facilities. Daily recordkeeping for all facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460; and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: January 28, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-2513 Filed 1-31-92; 8:45 am]

BILLING CODE 6530-50-M

[FRL-4099-5]

Public Water System Supervision Program Revision for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provisions of § 1413 of the Safe Drinking Water Act as amended, 42 U.S.C. 300f et seq., and 40 CFR 142.10, the National Primary Drinking Water Regulations, that the State of Utah has revised its approved Public Water System Supervision (PWSS) Primacy Program. Utah has developed drinking water regulations for Total Coliforms that correspond to the National Primary Drinking Water Regulations for Total Coliforms promulgated by EPA on June 29, 1989

(54FR 29544). EPA has approved this State program revision. This determination shall become effective March 4, 1992 and was based upon a thorough evaluation of Utah's PWSS programs which has met the requirements stated in 40 CFR 142.10.

Utah's PWSS program, as presented and evaluated, has indicated that it is fully capable of carrying out all of the areas required to achieve primary enforcement capability.

Any interested parties are invited to submit written comments on this determination, and may request a public hearing on or before March 4, 1992. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action.

Requests for a public hearing should be addressed to: James J. Scherer, Regional Administrator, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, CO 80202-2466.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of the responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Utah. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Utah. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on March 4, 1992.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region VIII Library, 999 18th Street, Denver, Colorado 80202-2466, 10 a.m.—4 p.m. (MST), Mon-Fri.; (2) Department of Environmental Quality, Division of Drinking Water, 288 North 1460 West, Salt Lake City, Utah 84114-4830, 8 a.m.-5 p.m. (MST), Mon-Fri.; (3) Provo City Library, 425 West Center, Provo, Utah 84601; and (4) the Cedar City Public Library, 136 West Center, Cedar City, Utah, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Robert Clement, EPA Region VIII, Public Water Supply Program Section (8WM-DW) at the Denver address given above, telephone (303) 293-1417, (FTS) 330-1417.

Dated: January 21, 1992.

Jack W. McGraw,

Acting Regional Administrator, EPA, Region VIII.

[FR Doc. 92-2516 Filed 1-31-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4099-3]

Meeting Location Change for February 19-20 Meeting of the Coke Oven Batteries Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting location change.

SUMMARY: The National Emission Standards for Coke Oven Batteries Advisory Committee is scheduled to meet on February 19 from 11 a.m. til 6 p.m., and on February 20 from 8:30 a.m. till 3 p.m. The meeting will now be held at the Washington Court Hotel, 525 New Jersey Avenue, Washington, DC. This is a change from the previously announced location.

ADDRESS: The Committee will meet at the Washington Court Hotel, 525 New Jersey Ave NW., Washington, DC 20001, [202] 628-2100.

FOR FURTHER INFORMATION CONTACT: For information on substantive matters please contact Amanda Agnew, Office of Air Quality Planning and Standards [919] 541-5268. For information on administrative matters please contact the Committee's Facilitator, Phil Harter, at [202] 887-1033.

Dated: January 28, 1992

Chris Kirtz,

Designated Federal Official Coke Oven Battery Advisory Committee.

[FR Doc. 92-2514 Filed 1-31-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4099-7]

Stratospheric Ozone Protection Advisory Committee; Open Meeting—Thursday, February 20, 1992.

The next meeting of the U.S. Environmental Protection Agency's (EPA) Federal Advisory Council on Stratospheric Ozone Protection (STOPAC) will be held on Thursday, February 20, 1992. The meeting will take place from 9 a.m. to 1 p.m. at the holiday Inn Capital, 550 C Street SW., Washington, DC. The public is invited to attend and seating will be on a first come first serve basis.

The purpose of the meeting will be: To report on the status of the various title VI, Clean Air Act Amendment (CAA) rulemakings; to discuss the recently completed assessment reports prepared as background for the next round of negotiations for modifying the Montreal Protocol; and to discuss the petition for accelerated CFC phaseout submitted in early December 1991 by the Natural Resources Defense Council, Friends of the Earth, and Environmental Defense Fund.

For further information any member of the public may contact Martha Dye at (202) 260-6974 or write to the Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, ANR-445, 401 M Street SW., Washington, DC 20460.

Dated: January 28, 1992.

Eileen B. Claussen,

Director, Office of Atmospheric and Indoor Air Programs.

[FR Doc. 92-2517 Filed 1-31-92; 8:45 am]

BILLING CODE 5660-50-M

[OPPTS-40022; FRL 4006-4]

Conditional Exemptions from TSCA Section 4 Test Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is granting conditional exemptions from Toxic Substances Control Act (TSCA) section 4 test rule

requirements to certain manufacturers of chemical substances subject to these rules.

DATES: These conditional exemptions are effective on February 3, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: This notice grants conditional exemptions from TSCA section 4 test rule requirements to all manufacturers of the chemical substances identified below who submitted exemption applications in accordance with 40 CFR 790.80. In each case, EPA has received a letter of intent to conduct the testing from which exemption is sought. Accordingly, the Agency has conditionally approved these exemption applications because the conditions set out in 40 CFR 790.87 have been met. All conditional exemptions thus granted are contingent upon successful completion of testing and submission of data by the test sponsors according to the requirements of the applicable test rule.

If the test requirements are not met and EPA terminates a conditional exemption under 40 CFR 790.93, the Agency will notify each holder of an affected conditional exemption by certified mail or **Federal Register** notice.

This conditional approval applies to all manufacturers who submitted exemption applications for testing of the chemical substances named in the final test rules listed below from October 1, 1990 through September 30, 1991. Any application received after that date will be addressed separately.

Chemicals	CAS No.	CFR Citation
cresols		
ortho-cresols	95–48–7	40 CFR 799.1250
meta-cresols	108–39–4	
para-cresols	106–44–5	
cumene	98–82–8	40 CFR 799.1285
dichlorobenzenes	106–46–7	40 CFR 799.1052
1,3-dichloropropanol	96–23–1	40 CFR 799.5055
diethylene glycol butyl ether	112–34–5	40 CFR 799.1560
isopropanol	67–63–0	40 CFR 799.2325
methyl ethyl ketoxime	96–29–7	40 CFR 799.2700
1,1,1-trichloroethane	71–55–6	40 CFR 799.4400
vinyl fluoride	75–02–5	40 CFR 799.1700

As provided in 40 CFR 790.80, processors are not required to apply for an exemption or conduct testing unless EPA so specifies in a test rule or in a special **Federal Register** notice.

Authority: 15 U.S.C. 2601, 2603.

Dated: January 22, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–2537 Filed 1–31–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140172; FRL–4044–7]

Access to Confidential Business Information by ASCI Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ASCI Corporation (ASCI), of McLean, Virginia, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than February 18, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D2–0005, contractor ASCI, of 1365 Beverly Rd., McLean, VA, will assist the Office of Pollution Prevention and Toxics (OPPT) in administrative and graphic support services.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D2–0005, ASCI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ASCI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of November 11, 1991 (56 FR 56216), ASCI was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to extend ASCI's access to TSCA CBI under the new contract number 68–D2–0005.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ASCI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters only.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

ASCI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: January 24, 1992.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–2539 Filed 1–31–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Bank Reports of Condition and Income: Proposed Change in Definition of One-to-Four Family Residential Mortgages

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Request for comment.

SUMMARY: The Federal Financial Institutions Examination Council ("FFIEC" or "Examination Council") requests public comment on a proposed change in the definition of loans "secured by one-to-four family residential properties" as that term is used for purposes of reporting loans in the Reports of Condition and Income ("Call Reports") filed quarterly by insured commercial and FDIC-supervised savings banks. The definition of this loan category would be revised to include certain loans to builders for the construction of one-to-four family residences that have been pre-sold to home purchasers and meet certain other prudential criteria ("pre-sold residential construction loans"). These loans currently fall within the Call Report definition of "construction and land development" loans secured by real estate.

For state member banks that are supervised by the Federal Reserve Board ("FRB") and state nonmember commercial and savings banks supervised by the Federal Deposit Insurance Corporation ("FDIC"), the effect of this proposed Call Report definitional change would be to make certain pre-sold residential construction loans eligible for inclusion in the 50 percent risk weight category for risk-based capital purposes. This would occur because the risk-based capital guidelines issued by these two agencies incorporate the Call Report definition of "loans secured by one-to-four family residential properties" when identifying the types of loans included in the 50 percent risk weight category. For national banks that are supervised by the Office of the Comptroller of the currency ("OCC"), the proposed Call Report definitional change will have no effect on the risk weight for pre-sold residential construction loans because that agency's risk-based capital rules do not reference the Call Report definition for loans secured by one-to-four family residential properties. Savings associations supervised by the Office of Thrift Supervision ("OTS") prepare Thrift Financial Reports and not Call Reports. The OCC and OTS would have to amend their risk-based capital guidelines to lower the risk weight for pre-sold residential construction loans. Pre-sold residential construction loans are currently assigned a 100 percent risk weight by all four agencies.

DATE: Comments must be received by February 3, 1992.

ADDRESSES: Comments should be directed to Joe M. Cleaver, Executive Secretary, Federal Financial Institutions Examination Council, 1776 G Street, NW., Suite 850B, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: FRB—Rhoger H Pugh, Manager, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551, (202) 728–5883.

FDIC—Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429, (202) 898–8906.

OCC—David C. Motter, Special Assistant to the Chief National Bank Examiner, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, (202) 874–4922.

SUPPLEMENTARY INFORMATION: The filing of Reports of Condition and Income, also known as Call Reports, is required quarterly by the Federal Reserve Board for state member banks, the Federal Deposit Insurance Corporation for insured state nonmember commercial and savings banks, and the Office of the Comptroller of the Currency for national banks. The Call Reports include a schedule in which banks report their holdings of loans and leases by loan category. Five categories of "loans secured by real estate" are reported, two of which are "construction and land development" loans ("construction loans") and loans "secured by one-to-four family residential properties" ("one-to-four family residential mortgages"). The instructions for the preparation of the Call Report contain definitions for these loan categories and the instructions indicate that loans secured by real estate "for one-to-four family residential property construction and land development purposes with original maturities of 60 months or less" are to be treated as "construction loans" rather than as "one-to-four family residential mortgages."

The FFIEC is proposing to revise the Call Report loan category definitions for "construction loans" and "one-to-four family residential mortgages" to place certain conservatively underwritten loans to builders for the construction of one-to-four family residences that have been pre-sold to home purchasers ("pre-sold residential construction loans") in the latter loan category. In order for banks to be able to report a one-to-four family residential construction loan as part of its "one-to-four family residential mortgages" in the Call Report, the loan would have to meet the following criteria:

(1) The builder has significant equity in the construction project before any drawdown is to be made under the construction loan.

(2) The home buyer has entered into a firm contract to purchase the home;

(3) The home buyer has made a substantial "earnest money" deposit that would be lost if the buyer caused the contract not to be consummated;

(4) The home buyer has obtained a firm commitment for a permanent qualifying mortgage loan; and

(5) The loan is made in accordance with other more broadly applicable sound lending principles.

These criteria are intended to ensure that both the builder and home purchaser have substantial equity at risk that would be lost by failing to fulfill their obligations. Comment is specifically requested on these builder equity and purchaser earnest money standards, including the most appropriate way to define and compute a builder's project equity and the percentages or amounts of builder equity and purchaser earnest money that should be at risk.

Effect of Proposed Definitional Change on Risk-Based Capital

The FRB, FDIC, OCC, and OTS have each adopted risk-based capital guidelines for the depository institutions under their supervision. At present, pre-sold residential construction loans are assigned a 100 percent risk weight under each agency's guidelines.

The guidelines issued by the FRB and FDIC specify that the 50 percent risk weight category includes loans fully secured by first liens on one-to-four family residential properties, provided such loans have been approved in accordance with prudent underwriting standards and are neither more than 90 days past due nor carried in nonaccrual status. These two agencies' guidelines further state that the types of properties that qualify as one-to-four family residential properties are listed in the Call Report instructions. Consequently, a change in the Call Report instructions that places certain pre-sold residential construction loans within the types of properties that qualify as one-to-four family residential properties would have the effect of reducing the risk weight applicable to qualifying pre-sold

residential construction loans from 100 percent to 50 percent for state member and insured state nonmember banks.

Compliance with the specific criteria enumerated in the preceding section is intended to ensure that those pre-sold residential construction loans that are reportable as "one-to-four family residential mortgages" in the Call Report, provided they also meet prudent underwriting standards, will possess risk characteristics comparable to those normally present in the types of residential mortgages that are currently assigned a 50 percent risk weight by the FRB and FDIC and, therefore, that their inclusion in the 50 percent risk weight category is warranted.

The provision in the FRB and FDIC risk-based capital guidelines specifying that one-to-four family residential mortgages must be prudently underwritten in order to qualify for a 50 percent risk weight mandates that pre-sold residential construction loans must also comply with certain additional criteria. Moreover, a bank would be responsible for demonstrating to examiners that its pre-sold residential construction loans comply with these criteria. Failure to do so would result in the loans involved being assigned to the 100 percent risk weight category. The additional criteria for compliance are:

(1) The underlying lot is validly platted and bonded by the appropriate municipal regulatory authorities based on a determination that the development is permissible and that necessary infrastructure improvements (appropriate for a given project stage) have been substantially completed;

(2) The lot, the house under construction, and other improvements on the lost must serve as collateral for the construction loan; and

(3) Disbursement of loan funds under the construction loan by the bank is to be made to the builder in accordance with a reasonable construction budget and reasonable percentage-of-completion schedule.

Institutions must also incorporate other fundamental lending principles into their loan underwriting decisions for pre-sold residential construction loans. For example, institutions must be able to demonstrate that they have complied with their legal lending limits, that they have adequate market area knowledge, that builders have satisfactory payment and performance records, and that there are sufficient reserves and cashflow available to the builders.

In contrast to the FRB and FDIC risk-based capital guidelines, the guidelines adopted by the OCC do not contain a linkage to the Call Report definition of "one-to-four family residential mortgages." Therefore, for national banks, the proposed Call Report change will not alter the risk weight applicable to pre-sold residential construction loans. To reduce the risk weighting for these loans, the OCC would need to amend its risk-based capital rules. In this regard, the OCC is separately seeking public comment on a proposed change to its risk-based capital rules that would achieve such a reduction for national banks.

The Examination Council also notes that OTS has solicited public comment on a proposed amendment to its risk-based capital regulation for savings associations that would place certain pre-sold residential construction loans in the 50 percent risk weight category (56 FR 67551). The criteria for determining whether a pre-sold residential construction loan would be eligible for a 50 percent risk weight that are set forth in the OTS proposal and in this FFIEC proposal are the same.

Proposed Instructional Change

In the instructions for the preparation of the bank Reports of Condition and Income, the Examination Council proposes to add to the list of loans to be included in Schedule RC–C, "Loans and Lease Financing Receivables," item 1(c), "Secured by one-to-four family residential properties," and to the list of loans to be excluded from Schedule RC–C, item 1(a), "Construction and land development," the following:

Loans made in accordance with sound lending principles to builders with substantial project equity for the construction of one-to-four family residences that have been pre-sold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial "earnest money" deposits.

Dated: January 28, 1992.

Signed:

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

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BILLING CODE 6210–01–M

Supervisory Policy Statement on Securities Activities

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Statement of policy.

SUMMARY: The Federal Financial Institutions Examination Council (the "FFIEC"), which includes the Board of Governors of the Federal Reserve System ("FRB"), the Federal Deposit Insurance Corporation ("FDIC"), the National Credit Union Administration ("NCUA"), the Comptroller of the Currency ("OCC"), and the Office of Thrift Supervision ("OTS") (collectively, the "Agencies"), is approving this Statement of Policy mainly to update and revise its Supervisory Policy Statement on the "Selection of Securities Dealers and Unsuitable Investment Practices" which was approved by the FFIEC in April 1988 (the "April 1988 Supervisory Policy"), and subsequently adopted by the FRB, FDIC, NCUA, and the OCC.

The FFIEC recommended to its five member agencies that they adopt this Statement of Policy. The FRB, FDIC, OCC and OTS have done so. The NCUA will consider the adoption of the policy statement at their Board meeting on February 26, 1992. As adopted by the FRB, FDIC, OCC and OTS, it now supersedes the April 1988 Supervisory Statement of Policy.

This new Statement of Policy addresses the selection of securities dealers, requires depository institutions to establish prudent policies and strategies for securities transactions, defines securities trading or sales practices that are viewed by the agencies as being unsuitable when conducted in an investment portfolio, indicates characteristics of loans held for sale or trading, and establishes a framework for identifying when certain mortgage derivative products are high-risk mortgage securities which must be held either in a trading or held for sale account.

EFFECTIVE DATE: The FRB, FDIC, OCC, and OTS have adopted the Statement of Policy to be effective February 10, 1992.

FOR FURTHER INFORMATION CONTACT: At the FRB: Rhoger H. Pugh, Manager, Policy Development, Division of Banking Supervision and Regulation (202) 728–5883; Charles H. Holm, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202) 452–3502. At the FDIC: Sharon K. Lee, Capital Markets Specialist, Division of Supervision, (202) 898–6789; Robert F. Storch, Chief, Accounting Section, Division of Supervision (202) 898–8906. At the NCUA: Charles Felker (202) 682–9640. At the OCC: Owen Carney, Senior Advisor for Investment Securities (202) 874–5070; Jamie Newell, Senior Capital Markets Advisor (202) 874–5070. At the OTS: John M. Frech, Senior Accountant, Accounting Policy (202) 906–5649; J. Douglas Gordon, Senior Financial Economist (202) 906–5728.

SUPPLEMENTARY INFORMATION: In a number of cases where depository institutions have engaged in speculative or other non-investment activities in their investment portfolios, the portfolio managers appeared to have placed undue reliance on the advice of a securities sales representative. Some depository institutions have failed because of their speculative securities activities. Other institutions have had their earnings or capital impaired and the practical liquidity of their securities eroded by market value depreciation. Many of these problems may have been avoided had sound procedures been followed before using certain securities dealers.

These factors led to the development of a supervisory policy statement on the "Selection of Securities Dealers and Unsuitable Investment Practices" that was approved by the FFIEC in April 1988 and subsequently adopted by the FRB, FDIC, NCUA, and the OCC. That policy statement emphasized the importance of knowing the securities firms with whom a depository institution does business and also dealt with certain regulatory concerns pertaining to speculative and other activities improperly carried out in an institution's investment portfolio.

In addition, it identified risks associated with stripped mortgage-backed securities, residuals, and zero-coupon bonds and concluded that they may be unsuitable investments for depository institutions.

The FFIEC is now recommending adoption of this new Statement of Policy by each of its member agencies. If adopted, this Statement of Policy would supersede the April 1988 Policy Statement. This new Statement of Policy provides additional information on the development of a portfolio policy and strategies for securities and on securities practices that are inappropriate for an investment account. It also discusses factors that must be considered when evaluating whether the reporting of an institution's investment portfolio holdings is consistent with its intent and ability. In addition, this policy statement establishes a framework for determining when a mortgage derivative product is a high-risk mortgage security; and, once a mortgage derivative product is determined to be high-risk, it must be held in a trading or held for sale account.

Summary of Comments

On January 3, 1991, the FFIEC issued for comment a proposed Supervisory Policy Statement "Concerning Selection of Securities Dealers, Securities Portfolio Policies and Strategies and Unsuitable Investment Practices, and Stripped Mortgage-Backed Securities, Certain CMO Tranches, Residuals, and Zero-Coupon Bonds" (56 FR 263).

The proposed Statement of Policy informed insured depository institutions about:

- The selection of securities dealers;
- The documentation of policies and strategies for securities to be held for investment, held for sale or for trading purposes;
- Securities practices that are viewed by the federal financial institution regulators as being unsuitable when conducted in an investment portfolio; and
- Types of securities with volatile price or other high risk characteristics that are generally not suitable investments for depository institutions. Such securities may be subject to supervisory criticism, and depository institutions may be directed to establish a plan for disposal.

The FFIEC received 110 comment letters on the proposed Statement of Policy. Thirty-eight of the comments were from bank holding companies, fifteen were from state banks, fifteen were from thrift institutions, thirteen were from national banks, nine were from federal/state bank supervisory agencies, eight were from bank and thrift institution trade groups, eight were from consulting firms that perform work for banks and thrift institutions, and four were from other financial service corporations.

Of the 110 comment letters that were received, twenty-three were generally supportive of section I as proposed, and thirty-three were generally opposed to this Section. The remaining fifty-four did not indicate a view on section I. Twenty of the 110 comment letters received were generally supportive of section II as proposed, and sixty-five were generally opposed to section II. The remaining twenty-five did not indicate a view on section II.

Many of the commenters criticized section III. As a result of these comment letters, the Council proposed a revised section III on August 3, 1991 (56 FR 37095). The Council received over 90 comment letters on this proposal. Most of the commenters preferred changes in the quantitative criteria.

After giving due consideration to the comments received, the FFIEC has now decided to approve the Statement of Policy. The Statement of Policy as approved and recommended to the agencies contains revisions reflecting certain of the comments as set forth below. In addition, a discussion of the more significant comments, as well as the FFIEC's judgment as to their implication for the Statement of Policy as originally proposed, is presented below.

Section I: Selection of Securities Dealers

Comments received on section I generally addressed the following areas: (1) Clarifying the responsibilities of a board of directors in developing limits to transactions and business relationships with securities firms; (2) requiring institutions to obtain financial statements on securities firms with whom the institution does business; (3) establishing conflicts of interest policies; and (4) addressing the documentation burden for small insured depository institutions. The comments received on each of these areas are specifically addressed below.

1. Responsibilities of Boards of Directors

Several commenters expressed their concerns about the proposal's requirement that boards of directors or appropriate committees thereof develop lists of securities firms with whom management is authorized to do business and establish dollar limits on the types of transactions to be executed with each authorized securities firm. These commenters indicated that this requirement was an unnecessary expansion of director responsibilities. In addition, they indicated that they believed that depository institution management has the responsibility to establish operational strategies and to execute those strategies. In their opinion management should inform the board of directors about those strategies and the results of execution. The board would then be responsible for authorizing strategies to be executed and monitoring the performance of the execution.

The FFIEC agreed with the comments received on this issue. The language was changed to recognize the responsibilities of both managements and boards of directors in insured depository institutions.

2. Financial Statements of Securities Firms

Several commenters indicated that the proposed policy was too restrictive in this area. These commenters indicated that the proposed policy could essentially bar insured depository institutions from conducting business with reputable Wall Street firms that do not release financial statements since they are privately held or because they are subsidiaries or affiliates of securities firms whose financial statements are consolidated with the financial

statements of the parent. In addition, a few of the commenters indicated that the designation of the securities dealer as a "primary broker/dealer in U.S. Government Securities" by the Federal Reserve should provide sufficient evidence that the securities firm is creditworthy.

The FFIEC has considered these comments and continues to believe that the management of an insured depository institution should only do business with securities firms that are willing to provide complete and timely disclosure of their financial condition.

3. Conflicts of Interest Policies

Several commenters acknowledged the need for corporate conflicts of interest policies to govern relationships between depository institution personnel and third parties such as securities brokers. However, these commenters indicated that the proposed policy statement may be too restrictive given the structure of many of the large securities firms. These commenters indicated that the large securities firms separate retail activities from institutional activities. Because of this structure, the commenters recommended that the proposed policy provide enough flexibility to address conflicts of interest in a given instance, rather than propose a broad policy.

The FFIEC agreed with this recommendation by suggesting that an institution's board of directors consider adopting a policy governing those situations when employees of the depository institution are directly involved in securities transactions for the institution and are also engaging in personal securities transactions with the same firm.

4. Documentation Burden for Small Insured Depository Institutions

A few commenters indicated that the documentation and other requirements that the proposed policy place upon managements and boards of directors of depository institutions in Sections I and II were overly burdensome for small, community-based depository institutions. They indicated that the FFIEC either reconsider adopting the policy or specifically exclude small, community-based depository institutions from the scope of the policy statement.

The FFIEC believes that the policy statement includes guidance for the prudent operation of investment securities functions. This guidance should benefit all depository institutions and should not be limited in application to depository institutions meeting only certain characteristics.

Section II: Securities Portfolio Policies and Strategies and Unsuitable Investment Practices

Comments received on section II primarily addressed the following concerns: (1) Clarifying various issues concerning trading v. investment; and (2) requesting various technical changes to the list of unsuitable investment practices. The comments received on each of these areas are specifically addressed below.

1. Trading v. Investment Issues

A number of commentators indicated that the FFIEC was establishing accounting and reporting guidance for loans and investment securities that is at variance with GAAP. The commentators indicated that the FFIEC should let the accounting profession establish accounting and reporting guidance on these issues. These commentators indicated that implementation of the accounting and reporting criteria in the policy statement would result in significant changes in current practice. As a result, these commentators indicated that the FFIEC should work with the Financial Accounting Standards Board ("FASB") and the American Institute of Certified Public Accountants ("AICPA") to promulgate accounting and reporting standards in this area. Other commentators indicated that they believed that mark-to-market accounting was inappropriate for investment securities and loans and should be dropped from the proposed policy statement.

The FFIEC believes that the policy statement reiterates established GAAP standards for accounting and reporting securities and loans that are held for investment, for sale, or for trading purposes. The policy statement does provide guidance for examiners to use in their consideration when evaluating whether the reporting of a depository institution's securities holdings is consistent with management's intent for such holdings.

Commentators also indicated that loans and investment securities that are held for sale should not be reported at the lower of cost or market. Rather, these commentators recommended that loans and investment securities held for sale should be reported at amortized cost with the market value disclosed in footnotes to financial statements or in supplementary schedules in regulatory reports.

The FFIEC believes that reporting securities and loans held for sale at amortized cost is not in compliance with existing GAAP standards. In addition, the FFIEC has observed that some depository institutions typically sell those securities with market gains and keep the remaining securities in portfolio with significant inherent market losses. This practice consistently overstates earnings and keeps loans and securities with low credit quality, extended maturities and little liquidity in portfolio. The FFIEC believes that dealing with such circumstances by additional disclosure doesn't deal with the asset quality problems as well as the fair presentation of the level of capital of the depository institution.

Many of the commentators indicated that loans should be excluded from the scope of this policy statement. Some of these commentators indicated that this policy statement provides guidance for investment securities activities and that accounting for loans is such an important topic that it deserves full and complete evaluation. Other commentators indicated that this proposal was designed to deal with questions arising from a depository institution's securities activities, not its lending activities. In their view, consideration of lending activities should only be addressed in a separate policy statement that is the result of detailed study and consideration.

However, GAAP requires loans held for sale or trading to be treated in a manner consistent with securities held for sale or trading.

Many commentators recommended that the proposed policy statement consider permitting the active management of U.S. Treasury or federal agency securities having remaining maturities of six months or less without automatically resulting in a depository institution classifying an entire investment portfolio as a trading account or held for sale. These commentators indicated that sophisticated investment managers typically liquidate these securities within six months of maturity at insignificant gains or losses (because of the fact that they are so close to maturity) in order to redeploy these funds.

The policy now specifically indicates that the remaining life of the security is one factor for examiners to consider when evaluating whether a security is held for sale or trading. The FFIEC believes that examiners will exercise judgment in this area.

A number of commentators expressed concern that examiners may arbitrarily and inconsistently require the transfer of securities originally in the investment portfolio to the trading account or the held for sale account. In addition, a

number of commentators indicated that the factors may result in the continuation of subjective determinations by financial institutions, regulators, and independent auditors. The commentators indicated that the FFIEC should develop consistent implementation guidance to the examiners and should monitor the implementation by examiners to ensure that all depository institutions are treated consistently.

The FFIEC member Agencies intend to work closely together to reduce the risk of inconsistent application.

A number of commentators indicated that the factors that must be considered when evaluating management's intent for holdings of loans and investment securities excludes sales volumes that result from unanticipated or unforeseen conditions. These commentators indicated that there are times that securities are prudently sold in response to factors that were not foreseen or anticipated at the time the securities were purchased. These commentators indicated that these sales should be excluded when evaluating management's intent.

The FFIEC believes that this issue is addressed in the factors that examiners must consider when evaluating whether the reporting of a depository institution's securities holdings is consistent with management's intent for such holdings. The FFIEC believes that examiners will exercise judgment in this area.

A number of commentators objected to the policy criteria that only depository institutions that have strong capital and earnings can engage in securities trading activity in a closely supervised trading account. These commentators indicated that this criteria would seem to prohibit an institution suffering a temporary downturn in earnings from engaging in trading activities. These commentators suggested that strong liquidity and competent personnel should be substituted for "earnings."

The FFIEC agrees that strong liquidity and competent personnel are factors for determining whether an institution should engage in trading activities. However, the institution's earnings is another important factor that should be considered.

2. Unsuitable Investment Practices Issues

Many of the commentators expressed various concerns about this area of section II. A summary of their comments follows.

a. *Extended settlements.* A number of commentators indicated that the classification of all corporate or extended settlements for U.S. Government securities as unsuitable investment practices fails to consider that certain issues have regular way settlements up to 45 days. For example, some new issues of mortgage backed securities typically have a 45 day delay in settlement.

The FFIEC made a change to this section to accommodate the comments received.

b. *"Bond swapping."* A number of commentators indicated that this term should be eliminated since the use of this term is very general and is much more generic than the activity described. The commentators indicated that these other activities should not be confused for the activities described under this term in the proposal.

The FFIEC made a change to this section to accommodate the comments received.

c. *Covered calls.* A number of commentators indicated that the proposed policy was too restrictive. Some commentators indicated that call writers can issue calls on a given date and subsequently purchase calls on a later date, effectively eliminating the call holder's ability to dislodge the securities when an "in the money" condition is present. Other commentators indicated that writers of covered calls do not always deliver securities to the call holder, rather they can settle with the call holder in cash. In these cases, the call holder has no claim to the underlying security and the call writer could still have the intent and ability to hold the security to maturity. In their view, historical cost accounting would still be appropriate in these circumstances. The FFIEC agreed with commentators with respect to covered call options that must be settled in cash.

d. *Delegation of discretionary investment authority.* Some commentators indicated that a policy statement requiring that all investment portfolio assets subject to discretionary management to be reported as held for sale was overly broad. In their view, this proposal did not take into account those situations where depository institutions in a common control group delegate their investment authority to subsidiary or affiliated investment advisers. Also, they indicated that this does not consider those situations where the management of the depository institution requires the third-party investment adviser to obtain approval from the depository institution prior to any securities transaction.

The FFIEC has made a change in this section to accommodate the comments received.

Section III: Mortgage Derivative Products, Other Asset Backed Products, and Zero-Coupon Bonds

Comments received on section III mainly addressed the following issues: (1) Whether the quantitative criteria proposed for determining high-risk mortgage securities in section III effectively distinguish high-risk mortgage derivative products from all other mortgage derivative products; (2) the analysis requirements for high-risk and nonhigh-risk mortgage derivative products; (3) the reporting treatment of high-risk mortgage derivative products; (4) the discretion given to examiners to determine whether mortgage derivative products are high-risk; (5) whether current holdings of mortgage derivative products were subject to the policy; and (6) whether the method of determining overall interest-rate risk reduction was appropriate. The Federal Register notice of August 2, 1991, specifically asked for comments on the first two issues. The comments received on each of these areas are specifically addressed below.

1. The Quantitative Criteria

A general principle underlying the 3-part test is that mortgage derivative products possessing average life or price volatility in excess of a standard fixed rate 30 year mortgage backed pass-through security are high-risk mortgage securities and are not suitable investments for depository institutions.

The August, 1991 proposal established three tests to use in determining when a mortgage derivative product becomes a high-risk mortgage security. These tests measured the weighted average life of the security, the average life sensitivity, and the price sensitivity of the security at the date of purchase and at subsequent periodic testing dates. The tests were based on the characteristics of a benchmark standard fixed rate 30 year mortgage backed pass-through security. However, the Council set the limits lower than the benchmark, to conform with a premium security with a coupon 100 basis points above the current coupon instrument.

Specific comments on the quantitative tests were received from 55 commenters. Many commenters noted that a newly issued current coupon mortgage pass-through would fail all three of the quantitative tests in the proposed policy. Current coupon mortgage pass-throughs have a higher weighted average life than the limit in the first test, extend or contract more than the second limit, and change in price by more than the limit in the third test of that version. Several commenters estimated that between 40

and 50 percent of mortgage derivative products would fail the three part test.

Thirty-five commenters wanted the first weighted average life test changed or eliminated. The great majority of these comments suggested increasing the weighted average life limit for nonhigh-risk treatment. Twenty-eight commenters requested changes in or abolishment of the weighted average life sensitivity test. Twenty-six commenters wanted the price sensitivity test changed or eliminated.

In response to these comments the Council has increased the limit on the weighted average life test to 10 years, and increased the price sensitivity test limit to a 17% move in price for a ±300 basis point shift in the yield curve. These values are consistent with the newly issued current coupon FNMA security discussed above.

In setting the limits for the 3-part test the Council looked to a current coupon pass-through that was newly issued by the Federal National Mortgage Corporation (FNMA). The current coupon in early September, 1991 was 8.5 percent. The consensus prepayment rate for that security in early September was 150 PSA. At that prepayment speed the pass-through had a weighted average life (WAL) of 9.7 years. The WAL after a 300 basis point parallel upward shift in Treasury rates equaled 12.0 years. A move down 300 basis points yielded a WAL of 3.8 years. Price fell by 16.3 percent when rates rose by 300 basis points and rose by 11.0 percent when rates fell by 300 basis points. This security is the benchmark security for the policy statement.

The Council set the WAL limit in test 1 at 10 years, just above the current coupon newly issued FNMA security. The WAL sensitivity test was set at +4 years for an increase of 300 basis points in rates, and −6 years for a 300 basis point fall in rates. For consistency among the 3 tests the WAL sensitivity test allows greater increases in WAL than that associated with the current coupon FNMA. Higher coupon securities have greater WAL sensitivity, but tend to have shorter WAL and lower price sensitivity than securities bearing a lower coupon. The limits on the price test were set at 17 percent to include the current coupon FNMA in the low-risk category.

2. Constant Spread

A number of commenters expressed concern about the process to be used to calculate price sensitivity. Many recognized that mortgage derivative products have embedded options that are best measured using option pricing methodologies. However, these commenters suggested that an option pricing methodology would be too complex to incorporate into this proposal. Some of these commenters suggested that a simple constant spread approach be used to estimate price sensitivity.

The Agencies have adopted an approach that is based on a constant spread to Treasury. The model assumes a fixed interest spread over the Treasury yield curve, and that the spread be determined by the bid side of the market at the time of purchase. The initial price to be used in the calculations should be the ask price.

3. Floaters

Fourteen commenters asked that the exemption from the first two tests for floaters be changed. In response to the comments on floaters the Council has changed the exemption for floaters to an exemption from tests 1 and 2 for all floaters below their cap.

Previously floaters would be exempt from tests 1 and 2 if their fully indexed rate was at least 125 basis points below the cap. Institutions may buy back caps for capped floaters to reinstate the exemption from those tests.

4. Reporting and Analysis Requirements

The Council received 22 comments on the requirements to analyze high-risk securities internally each quarter and analyze low-risk securities at least annually. Several commenters were concerned that the requirement to perform internal analysis quarterly on all high-risk products would add a prohibitive burden. Several were concerned that the requirement to obtain independent analysis of low-risk derivatives annually significantly raised the cost of holding those instruments. Many commenters asked for clarification as to which methods qualify as independent analysis for the purposes of testing nonhigh-risk securities.

In response to those comments, management may use industry calculators available in the marketplace for analysis of low-risk products. Management must understand the assumptions used in the model and insure that those assumptions are reasonable.

5. Designation of High-Risk Mortgage Derivative Products

Twenty-four commenters requested that the high-risk designation not be permanent and that high-risk securities be allowed to return to nonhigh-risk status if they later fall within the limits of all three tests. The Council agrees that high-risk securities may later become nonhigh-risk, and that high-risk securities later falling within the limits of the three tests for two consecutive quarters may be redesignated as nonhigh-risk.

6. Accounting Treatment of High-Risk Mortgage Derivative Products

Twenty-nine commenters asked for changes in the accounting treatment of high-risk securities. Most of these commenters were concerned that the accounting for high-risk mortgage derivative products deviated from GAAP treatment of investment securities. They noted that they might have the intent and ability to hold the instruments to maturity. After considering those comments the Council has decided to retain the proposed treatment for high-risk securities. The securities are to be used to reduce overall interest-rate risk. Because of the high price volatility and average life sensitivity of these high-risk securities, an institution may need to actively manage their portfolio to achieve effective interest rate risk reduction. Accordingly, these securities cannot be held as investments.

7. Examiner Discretion

Many commenters complained that examiners are given too much discretion to declare securities high risk in the policy. The Council has deleted a sentence allowing examiners to declare as high-risk a mortgage derivative product that the 3-part test determines to be low-risk. However, the policy contains langauge that allows the Agencies to take action to prevent circumvention of the guidelines.

8. Application of Policy to Current Holdings of High-Risk Products

Sixteen commenters asked that the grandfather clause be clarified so that the policy only affects securities purchased after the effective date of the policy. The Council agrees that the policy applies to all high-risk mortgage securities after the effective date of the policy. Purchases made prior to the effective date of this policy statement generally will be reviewed in accordance with previously-existing supervisory policies.

9. Method of Determining Overall Interest-Rate Risk Reduction

Eleven commenters suggested that the policy treat interest-rate risk reduction from a portfolio approach, and not on an individual security basis. For the purposes of the policy high-risk mortgage derivative products must

reduce the institution's overall interest rate risk.

10. Other Issues

In response to several comments noting the lack of availability of a prospectus supplement until after purchase of many mortgage securities, the Council agrees that management may obtain the prospectus supplement after purchase if they perform the required analysis before purchase of the securities.

In response to several comments about examiner use of prepayment assumptions, the reference to examiner use of own prepayment assumptions has been deleted. Instead, examiners may use median industry prepayment assumptions when management's prepayment assumptions are unreasonable.

A number of commentators expressed concern that the burden of an annual test and the potential accounting implications of the annual test may cause financial institutions to avoid even the lowest risk CMO tranches. Further, it was suggested that these same institutions may exacerbate their overall interest rate risk by purchasing 30-year fixed rate MBS. To lessen the likelihood of these unintended effects, the agencies are considering designating a class of mortgage derivative products that, after initially being tested at the time of purchase, would be exempted from further testing.

These mortgage derivative products would have less average life and price sensitivity than a current coupon, fixed rate 30-year mortgage-backed pass through security. In addition, they would have a very low likelihood of becoming high-risk. Certain mortgage derivatives that meet the requirements of this designation could be held in the investment account, at cost, with no subsequent testing. Because this designation requires empirical analysis, the agencies have decided to study the issue further.

Council Action

After considering all of the comments received and making changes to the versions of the policy statements that were published for public comment as discussed above, the FFIEC has approved the Supervisory Policy Statement on Securities Activities and has recommended to its five member Agencies that each of them adopt the policy.

The text of the statement of policy follows.

Supervisory Policy Statement on Securities Activities

Purpose

This supervisory policy informs insured depository institutions about:

—recommended procedures to be used in the selection of a securities dealer;

—the need to document and implement prudent policies and strategies for securities, whether they are held for investment, trading, or for sale, and to establish systems and internal controls that are designed to ensure that securities activities are consistent with the policies and strategies;

—certain securities trading and sales practices that are viewed by the federal financial institution regulators as being unsuitable when conducted in an investment portfolio, thereby precluding the use of the amortized cost basis of accounting for securities holdings resulting from such practices.

The substance of an institution's securities activities determines whether securities reported as investments are, in reality, held for trading or for sale. Securities held for trading must be reported at market value and securities held for sale must be reported at the lower of cost or market value. The guidance regarding securities held for sale or trading is also applicable to loans held for sale or trading:

—high-risk mortgage securities that are not suitable investment portfolio holdings for depository institutions. These securities may only be acquired to reduce an institution's interest rate risk and must be reported in the trading account at market value, or as assets held for sale at the lower of cost or market value. Examiners may seek the orderly divestiture of high-risk mortgage securities that do not reduce interest rate risk. Other products with risk characteristics similar to high-risk mortgage securities may be subject to the same supervisory treatment; and

—disproportionately large holdings of long-term zero-coupon bonds that are considered an imprudent investment practice. Such holdings will be subject to criticism by examiners who may seek their orderly disposal.

Background

In a number of cases where depository institutions engaged in speculative or other non-investment activities in their investment portfolios, the portfolio managers placed undue reliance on the advice of a securities sales representative. Some depository institutions have failed because of their speculative securities activities. Other institutions have had their earnings or capital impaired and the practical liquidity of their securities eroded by market value depreciation. Many of these problems could have been avoided had sound procedures been followed.

These factors led to the development of a supervisory policy statement on the "Selection of Securities Dealers and Unsuitable Investment Practices" that was approved by the Federal Financial Institutions Examination Council ("FFIEC") in April 1988. That policy statement emphasized the importance of knowing the securities firms with whom a depository institution does business and also dealt with certain regulatory concerns pertaining to speculative and other activities improperly carried out in an institution's investment portfolio.

In addition, it identified risks associated with stripped mortgage-backed securities, residuals, and zero-coupon bonds and concluded that they may be unsuitable investments for the vast majority of depository institutions.

This supervisory policy statement supersedes the April 1988 Policy Statement by providing additional information on the development of a portfolio policy and strategies for securities and on securities practices that are inappropriate for an investment account. It also discusses factors that must be considered when evaluating whether the reporting of an institution's investment portfolio holdings is consistent with its intent and ability. In addition, this policy statement contains expanded guidance on the suitability of acquiring and holding mortgage derivative products, other similar products, and zero coupon bonds.

Detailed guidance is provided in the following three sections.

Section I: Selection of Securities Dealers

Many depository institutions rely on the expertise and advice of a securities sales representative for recommendations concerning proposed investments and investment strategies and for the timing and pricing of securities transactions. Many of the problems depository institutions have experienced with their securities activities could have been avoided had sound procedures been followed.

It is essential that the management of a depository institution have sufficient knowledge about the securities firms and personnel with whom they are doing business. A depository institution should not engage in securities transactions with any securities firm that is unwilling to provide complete and timely disclosure of its financial condition. Management should review

the securities firm's financial statements and evaluate the firm's ability to honor its commitments before entering into transactions with the firm and periodically thereafter. An inquiry into the general reputation of the dealer also is necessary. The board of directors, or an appropriate committee of the board,[1] should periodically review and approve a list of securities firms with whom management is authorized to do business. The board or an appropriate committee thereof should also periodically review and approve limits on the amounts and types of transactions to be executed with each authorized securities firm. Limits to be considered should include dollar amounts of unsettled trades, safekeeping arrangements, repurchase transactions, securities lending and borrowing, other transactions with credit risk, and total credit risk with an individual dealer.

At a minimum, depository institutions should consider the following in selecting and retaining a securities firm:

(1) The ability of the securities dealer and its subsidiaries or affiliates to fulfill commitments as evidenced by capital strength, liquidity and operating results. This evidence should be gathered from current financial data, annual reports, credit reports, and other sources of financial information.

(2) The dealer's general reputation for financial stability and fair and honest dealings with customers. Other depository institutions that have been or are currently customers of the dealer should be contacted.

(3) Information available from State or Federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers, concerning any formal enforcement actions against the dealer, its affiliates or associated personnel.

(4) In those instances when the institution relies upon the advice of a dealer's sales representative, the background of the sales representative with whom business will be conducted in order to determine his or her experience and expertise.

In addition, the board of directors (or an appropriate committee of the board) must ensure that the depository institution's management has established appropriate procedures to obtain and maintain possession or control of securities purchased. In this regard, purchased securities and repurchase agreement collateral should only be left in safekeeping with selling dealers when: (1) The board of directors or an appropriate committee thereof is completely satisfied as to the creditworthiness of the securities dealer and (2) the aggregate market value of securities held in safekeeping in this manner is within credit limitations that have been approved by the board of directors (or an appropriate committee of the board) for unsecured transactions (see the October 1985 FFIEC Policy Statement entitled "Repurchase Agreements of Depository Institutions with Securities Dealers and Others"). Federal credit unions, when entering into a repurchase agreement with a broker/dealer, are not permitted to maintain the collateral with the broker/dealer (see part 703 of the National Credit Union Administration rules and regulations).

As part of the process of providing oversight over a depository institution's relationships with securities dealers, the board of directors may wish to consider adopting a policy concerning conflicts of interest when employees who are directly involved in purchasing and selling securities for the depository institution are also engaging in personal securities transactions with these same securities firms.

The board may also wish to adopt a policy applicable to directors, officers, and employees concerning the receipt of gifts, gratuities, or travel expenses from approved securities dealer firms and their personnel. (Also see in this connection the Bank Bribery Act, 18 U.S.C. 215, and interpretive releases.)

Section II: Securities Portfolio Policy and Strategies and Unsuitable Investment Practices

Policy and Strategies

A portfolio policy is a written description of authorized securities investment, trading and held for sale activities and the goals and objectives the institution expects to achieve through such activities. Strategies are written descriptions of the way management intends to achieve these goals and objectives and should address management's plans for each type of security (e.g., U.S. Treasuries, mortgage-backed securities, etc.) that will be used to carry out the portfolio policy. The portfolio policy and strategies should be consistent with the institution's overall business plan which may involve trading, held for sale, and investment activities. However, securities trading activity should only be conducted in a closely supervised trading account by institutions with strong capital and earnings and adequate liquidity. Each institution's portfolio policy and strategies must describe anticipated investment activities and either identify anticipated trading and held for sale activities or state that the institution will not enter into any trading or held for sale activities.

Securities activities must be conducted in a safe and sound manner. Each depository institution's board of directors should review and approve the overall portfolio policy and management's documented strategies annually, or more frequently if appropriate, and these approvals must be adequately documented. Furthermore, the board of directors or an appropriate committee thereof should review the institution's securities activities and holdings no less than quarterly. The board of directors or an appropriate committee thereof should also oversee the establishment of appropriate systems and internal controls that are designed to ensure that securities activities and holdings are consistent with the strategies of the institution and that the implementation of the strategies remains consistent with the portfolio policy's objectives.

When developing its portfolio policy and strategies, an institution should take into account such factors as asset/liability position, asset concentrations, interest rate risk, liquidity, credit risk, market volatility, and management's capabilities and desired rate of return. If the board of directors of a depository institution fails to adopt policies and strategies related to securities or if an institution fails to adhere to the policies and strategies approved by its board of directors, examiners may determine that some or all securities are held for sale or held for trading. Held for sale securities must be reported at the lower of cost or market value and trading activities must be reported at marked value.

Proper Reporting of Securities Activities

Securities must be reported in accordance with generally accepted accounting principles (GAAP) [2] consistent with the institution's intent to trade, to hold for sale or to hold for investment.

Depository institution investment portfolios are maintained to provide earnings consistent with the safety factors of quality, maturity, marketability, and risk diversification.

[1] An appropriate committee of the board is a committee whose membership includes outside directors or whose actions are subject to review and ratification by the board of directors.

[2] In those cases where a difference in the interpretation of GAAP arises between an institution and its primary federal supervisory agency, the supervisory agency will require the institution to prepare its supervisory reports in accordance with the agency's interpretation.

Securities that are purchased to accomplish these objectives may be reported at their amortized cost only when the depository institution has both the intent and ability to hold the assets for long-term investment purposes. Transactions entered into in anticipation of taking gains on short-term price movements are not suitable as investment portfolio practices. Such transactions should only be conducted in a closely supervised securities trading account by institutions that have strong capital and earnings and adequate liquidity. Securities holdings that do not meet the reporting criteria for either investment or trading portfolios must be designated as held for sale.

Trading in the investment portfolio is characterized by a high volume of purchase and sale activity that, when considered in light of a short holding period for securities, clearly demonstrates management's intent to profit from short-term price movements. In such situations, a failure to follow accounting and reporting standards applicable to trading accounts may result in a misstatement of the depository institution's income and other published financial data and the filing of inaccurate regulatory reports. It is an unsafe and unsound practice to report securities holdings that result from trading transactions using reporting standards that are intended for securities held for investment purposes. Securities held for trading must be reported at market value, with unrealized gains and losses recognized in current income. Prices used in periodic revaluations should be obtained from sources that are independent of the securities dealer doing business with the depository institution. When prices are internally estimated by the portfolio manager (when reliable external price quotations are not available), they should be reviewed by persons independent of the portfolio management function.

A pattern of intermittent sales transactions in the investment portfolio may suggest that securities ostensibly held as long-term portfolio assets are actually held for sale. Securities held for sale must be reported at the lower of cost or market value with unrealized losses (and recoveries of unrealized losses) being recognized in current income. It is an unsafe and unsound practice to report securities held for sale using reporting standards that are intended for securities held for investment purposes.

It is the substance of an institution's securities activities that determines whether securities reported as being held as investment portfolio assets are, in reality, held for trading or for sale. Examiners will particularly scrutinize institutions that exhibit a pattern or practice of reporting significant amounts of realized gains on sales from their investment portfolio and that have significant amounts of unrecognized losses. If in the examiner's judgment such a practice has occurred, some or all of the securities reported as held for investment will be designated as held for sale or for trading.

On the other hand, infrequent investment portfolio restructuring activities that are carried out in conjunction with a prudent overall business plan and that do not result in a pattern of gains being realized and losses being deferred on investment portfolio securities will generally be viewed as an acceptable investment practice. Such activities usually would not result in the redesignation of securities held for investment as securities held for trading or for sale.

A number of factors must be considered when evaluating whether the reporting of a depository institution's investment portfolio securities holdings is consistent with management's intent for such holdings. Some of the factors relating to investment portfolio securities for each reporting period include:

(1) The dollar amount of gains realized from sales in relation to the dollar amount of losses realized from sales and in relation to unrealized losses for other investment portfolio securities;

(2) The dollar amount of gains and losses realized from sales in relation to net income and capital;

(3) The number of sales transactions resulting in gains and the number resulting in losses;

(4) The gross dollar volume of securities purchases and sales;

(5) The rapidity of turnover, including consideration of the length of time securities are owned prior to sale, the length of time securities are held after an unrealized gain is evident, and the remaining life of the security at the time of sale; and

(6) The reasons for the depository institution's engaging in specific transactions, and whether these reasons are consistent with the portfolio policy and strategies.

Some of the factors that also must be considered to evaluate the depository institution's ability to continue to hold investment portfolio securities include:

(1) The sources and availability of funding;

(2) The ability to meet margin calls and over-collateralization requirements related to leveraged holdings;

(3) Limitations such as capital requirements, the legality of certain securities holdings, liquidity requirements, legal lending limits, and prudential concentration limits; and

(4) The ability to continue as a going-concern and to liquidate assets in the normal course of business.

Reporting of Loans Held for Sale or Trading

Historically, depository institutions have tended to hold loans until maturity. Consequently, the application of lower of cost or market value accounting to portions of the loan portfolio has not been an issue except in those depository institutions that have regularly originated or purchased loans for purposes of subsequent sale. Nevertheless, as with debt securities, reporting loans at the lower of cost or market value is required when the institution does not have both the intent and ability to hold these loans for long-term investment purposes.

The factors listed above should also be considered when evaluating whether the reporting of loans is consistent with management's intent and ability to hold the loans. A pattern of originating loans at yields below market and subsequently selling them at par once the yield approximates market is another factor that will be considered when evaluating management's intent.

Unsuitable Investment Practices

The following activities raise specific supervisory concerns. The first six practices are considered unsuitable when they occur in a depository institution's investment portfolio. Such practices should only be conducted in an appropriately controlled and segregated trading or held-for-sale portfolio. Practices seven and eight involve an institution's transfer of control over individual assets, segments of the portfolio, or the entire portfolio to persons or companies unaffiliated with the institution. In such situations, the depository institution clearly no longer has the ability to hold the affected securities for investment purposes and such securities should be reported as held for sale. The ninth practice is wholly unacceptable under all circumstances.

In addition, certain of the following practices may violate state law in certain states. State-chartered depository institutions are therefore cautioned to consult with their state supervisors.

1. "Gains Trading"

"Gains trading" is characterized by the purchase of a security as an investment portfolio asset and the subsequent sale of that same security at a profit after a short-term holding period. Securities that cannot be sold at a profit are retained as investment portfolio assets. These "losers" are retained in the investment portfolio because investment portfolio holdings are accounted for at amortized cost, and losses are normally not recognized unless the security is sold. Gains trading often results in a portfolio of securities with one or more of the following characteristics: extended maturities, lower credit quality, high market depreciation, and limited practical liquidity. Frequent purchase and sale activity, combined with a short-term holding period for securities, clearly demonstrates management's intent to profit from short-term price movements. This indicates that other securities held in the investment portfolio may also be held for trading or for sale.

In many cases, "gains trading" involves the trading of "when-issued" securities, the use of "pair-off" transactions (including transactions involving off-balance sheet contracts), or "corporate" or "extended settlements" because these speculative practices afford an opportunity for substantial price changes to occur before payment for the securities is due.

2. "When-Issued" Securities Trading

"When-issued" securities trading is the buying and selling of securities in the period between the announcement of an offering and the issuance and payment date of the securities. A purchaser of a "when-issued" security acquires all the risks and rewards of owning a security and may sell the "when-issued" security at a profit before having to take delivery and pay for it. Purchases and subsequent sales of securities during the "when-issued" period may not be conducted in a bank's investment portfolio, but are regarded instead as a trading activity.

3. "Pair-Offs"

A "pair-off" is a security purchase transaction that is closed-out or sold at, or prior to, settlement date or expiration date. "Pair-offs" may also involve optional or mandatory off-balance sheet contracts (e.g., swaps, options on swaps, forward commitments and options on forward commitments).

In a "pair-off", an investment portfolio manager will commit to purchase a security. Then, prior to the predetermined settlement date, the portfolio manager will "pair-off" the purchase with a sale of the same security prior to, or on, the original settlement date. Profits or losses on the transactions are settled by one party to the transaction remitting to the counterparty the difference between the purchase and sale price. Like "when-issued" trading, "pair-offs" permit an institution to speculate on securities price movements without having to pay for the securities. Such transactions are regarded as a trading activity.

4. Corporate or Extended Settlements

Regular-way settlement for transactions in U.S. Government and Federal agency securities (other than mortgage-backed and derivative products) is one business day after the trade date. Regular-way settlement for corporate and municipal securities and stripped U.S. Treasury securities and similar products is five business days after the trade date. In addition, regular-way settlement for transactions in mortgage backed and mortgage derivative products varies and can be up to 45 to 60 days after trade date.

The use of an extended or corporate settlement method for U.S. Government securities purchases and an extended settlement period (more than 5 business days) for stripped U.S. Treasury securities and similar products appears to be offered by securities dealers in order to facilitate speculation on the part of the purchaser, similar to the profit opportunities available in a "pair-off" transaction. The use of a settlement period in excess of the regular-way settlement period appropriate for an instrument and, in any event beyond 60 days, in order to facilitate speculation is considered a trading activity.

5. Repositioning Repurchase Agreements

A repositioning repurchase agreement is a funding technique often used by dealers who encourage speculation through the use of "gains trading," "pair-off," "when-issued trading," and "corporate or extended settlement" transactions for securities which cannot be sold at a profit. The repositioning repurchase agreement is a service provided by the dealer so the buyer can hold the speculative position until it can be sold at a gain. The buyer purchasing the security pays the dealer a small "margin" that approximates the actual loss in the security. The dealer then agrees to fund the purchase of the security by buying it back from the purchaser under a resale agreement. Any dealer financing technique such as a repositioning repurchase agreement that is used to fund the speculative purchase of securities may be indicative of securities that were acquired with the intent to resell at a profit at or prior to settlement or after a short-term holding period. This activity is inherently speculative and is a wholly unsuitable investment practice for depository institutions. Securities acquired in this manner should be reported as either trading account assets or as securities held for sale.

6. Short Sales

A short sale is the sale of a security that is not owned. The purpose of a short sale generally is to speculate on the fall in the price of the security. Short sales are transactions that should be conducted as a trading activity and, when conducted in the investment portfolio, they are considered to be unsuitable.

A short sale that involves the delivery of the security sold short by borrowing it from the depository institution's investment portfolio should not be reported as a short sale. Instead, it should be reported as a sale of the underlying security with gain or loss recognized.

Short sales are not permissible activities for Federal credit unions.

7. Delegation of Discretionary Investment Authority

Some depository institutions have delegated the purchase and sale authority for all or a portion of their investment securities portfolio to a non-affiliated firm or to an individual who is not an employee of the institution or one of its affiliates. Such a delegation of authority is intended to obtain a higher total return on the portfolio than the institution would realize if it managed the portfolio itself. When an institution has delegated such authority to a non-affiliated firm or to one or more individuals who are not employees of the depository institution or its affiliates, then the depository institution no longer has the ability to control its own securities and all holdings for which such authority has been delegated must be reported as held for sale.

The centralized management of investment portfolios of affiliated depository institutions by the parent holding company or another affiliate is not ordinarily considered to be the delegation of investment authority.

Investment authority will also not be considered delegated to unaffiliated parties when a depository institution's portfolio manager is required to authorize a recommended purchase or sale transaction prior to its execution and the portfolio manager, in practice, reviews such recommendations and

does, in fact, authorize such transactions.

8. Covered Calls

The writing of covered calls is an option strategy that, for a fee, grants the buyer of the call option the right to purchase a security owned by the option writer at a predetermined price before a specified future date. The option fee [3] received by the writing (selling) depository institution provides income and has the effect of increasing the effective yield on the portfolio asset "covering" the call.

Covered call programs have been promoted as hedging strategies because the fee received by the writer can be used to offset a limited amount of potential loss in the price of the underlying security. If interest rates rise, the call option fee can be used to partially offset the decline in the market value of a fixed rate security or the increased cost of market rate liabilities used to carry the security. However, there is no assurance that an option fee will completely offset the price decline on the security or the increased cost of liabilities and the resulting reduced spread between the institution's return on assets and funding costs.

As a practical matter, the gain on a security covered by a written call is limited to the amount of the difference between the carrying value of the security and the strike price at which the security will be called away. The potential for losses on the covered security is not similarly limited. In an effort to obtain higher yields, some portfolio managers have mistakenly relied on the theoretical hedging benefits of covered call writing, and have purchased extended maturity U.S. government or Federal agency securities. This practice can significantly increase risks taken by the depository institution by contributing to a maturity mismatch between its assets and its funding.

Institutions should only initiate a covered call program for securities when the board of directors or an appropriate board committee has specifically approved a policy permitting this activity. This policy must set forth specific procedures for controlling covered call strategies, including recordkeeping, reporting, and review of activity, as well as providing for appropriate management information systems to report the results. Since the purchaser of the call acquires the ability to call the security away from the institution that writes the option, the ability of that institution to continue to hold the security rests with an outside party. Securities held for investment against which call options have been written should therefore be redesignated as held for sale and reported at the lower of cost or market value.

However, if an option contract requires the writer to settle in cash, rather than by delivering an investment portfolio security, the institution writing the option maintains the ability to hold the security and, thus, the security may be reported as an investment. In this case, the option must still be reported at the lower of cost or market value.

Covered call writing is not a permissible activity for Federal credit unions.

9. "Adjusted Trading"

"Adjusted trading" is a practice involving the sale of a security to a broker or dealer at a price above the prevailing market value and the simultaneous purchase and booking of a different security, frequently a lower grade issue or one with a longer maturity, at a price greater than its market value. Thus, the broker or dealer is reimbursed for losses on the purchase from the institution and ensured a profit. Such transactions inappropriately defer the recognition of losses on the security sold and establish an excessive reported value for the newly acquired security. Consequently, such transactions are prohibited and may be in violation of 18 U.S.C. 1001–False Statements or Entries and 1005–False Entries.

Section III: Mortage Derivative Products, Other Asset Backed Products, and Zero-Coupon Bonds

Summary

Mortgage derivative products include Collateralized Mortgage Obligations ("CMOs"), Real Estate Mortgage Investment Conduits ("REMICs"), CMO and REMIC residuals, and Stripped Mortgage-Backed Securities ("SMBSs"). The cash flows from the mortgages underlying these securities are redirected to create two or more classes with different maturity or risk characteristics designed to meet a variety of investor needs and preferences.

Some mortgage derivative products exhibit considerably more price volatility than mortgages or ordinary mortgage pass-through securities and can expose investors to significant risk of loss if not managed in a safe and sound manner. This price volatility is caused in part by the uncertain cash flows that result from changes in the prepayment rates of the underlying mortgages.

In addition, because these products are complex, a high degree of technical expertise is required to understand how their prices and cash flows may behave in various interest rate and prepayment environments. Moreover, because the secondary market for some of these products is relatively thin, they may be difficult to liquidate should the need arise. Finally, there is additional uncertainty because new variants of these instruments continue to be introduced and their price performance under varying market and economic conditions has not been tested.

A general principle underlying this section is that mortgage derivative products possessing average life or price volatility in excess of a benchmark fixed rate 30-year mortgage-backed pass-through security are "high-risk mortgage securities" and are not suitable investments. All high-risk mortgage securities, as defined in detail below, acquired by depository institutions after February 10, 1992 must be carried in the institutions' trading account or as assets held for sale. On the other hand, mortgage derivative products that do not meet the definition of a high-risk mortgage security at the time of purchase should be reported as investments, held-for-sale assets, or trading assets, as appropriate. Institutions must ascertain no less frequently than annually that such products remain outside the high risk category.

Institutions that hold mortgage derivative products that meet the definition of a high-risk mortgage security must do so to reduce interest rate risk in accordance with safe and sound practices.[4] Furthermore, depository institutions that purchase high-risk mortgage securities must demonstrate that they understand and are effectively managing the risks associated with these instruments. Levels of activity involving high-risk mortgage securities should be reasonably related to an institution's capital, capacity to absorb losses, and

[3] Recognition of option fee income should be deferred until the option is exercised or expires. The covered call writer shall value the option at the lower of cost or market value at each report date.

[4] Notwithstanding the provisions of this supervisory policy requiring the use of high-risk mortgage securities to reduce interest rate risk, this supervisory policy is not meant to preclude an institution with strong capital and earnings and adequate liquidity that has a closely supervised trading department from acquiring high-risk mortgage securities for trading purposes. The trading department must operate in conformance with well-developed policies, procedures, and internal controls, including detailed plans prescribing specific position limits and control arrangements for enforcing these limits.

level of in-house management sophistication and expertise. Appropriate managerial and financial controls must be in place and the institution must analyze, monitor, and prudently adjust its holdings of high-risk mortgage securities in an environment of changing price and maturity expectations.

Prior to taking a position in any high-risk mortgage security, an institution should conduct an analysis to ensure that the position will reduce the institution's overall interest rate risk. An institution should also consider the liquidity and price volatility of these products prior to purchasing them. Circumstances in which the purchase or retention of high-risk mortgage securities is deemed by the appropriate federal regulatory authority to be contrary to safe and sound practices for depository institutions will result in criticism by examiners, who may require the orderly divestiture of high-risk mortgage securities. Purchases of high-risk mortgage securities prior to February 10, 1992 generally will be reviewed in accordance with previously-existing supervisory policies.

Securities and other products, whether carried on or off the balance sheet (such as CMO swaps, but excluding servicing assets), having risk characteristics similar to high-risk mortgage securities will be subject to the same supervisory treatment as high-risk mortgage securities.

Long-term zero coupon bonds also exhibit significant price volatility and may expose an institution to considerable risk. Disproportionately large holdings of these instruments may be considered an imprudent investment practice, which will be subject to criticism by examiners. In such instances, examiners may seek the orderly disposal of some or all of these securities. Assets slated for disposal are reported as assets held for sale at the lower of cost or market value.

Overview of the Securities

A. SMBSs consist of two classes of securities with each class receiving a different portion of the monthly interest and principal cash flows from the underlying mortgage-backed securities ("MBS"). In its purest form, an MBS is converted into an interest-only ("IO") strip, where the investor receives all of the interest cash flows and none of the principal, and a principal-only ("PO") strip, where the investor receives all of the principal cash flows and none of the interest. IOs and POs have highly volatile price characteristics based, in part, on the prepayment variability of the underlying mortgages. Therefore, IOs and POs will nearly always meet the definition of high risk in this policy.

From a market perspective, IOs and POs have relatively wide bid/ask spreads compared to mortgage-backed securities. This decreases the effectiveness of SMBSs as interest rate risk reduction tools from a price sensitivity perspective because interest rates and prepayments need to change by a significant amount before the price at which the security can be sold (i.e., the bid price) will exceed the price at which the security was purchased (i.e., the ask price).

B. CMOs and REMICs, hereinafter called CMOs, have been developed in response to investor concerns regarding the uncertainty of cash flows associated with the prepayment option of the underlying mortgagor. A CMO can be collateralized directly by mortgages, but more often is collateralized by MBSs issued or guaranteed by the Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), or Federal Home Loan Mortgage Corporation (FHLMC) and held in trust for CMO investors. In contrast to MBSs in which cash flow is received pro rata by all security holders, the cash flow from the mortgages underlying a CMO is segmented and paid in accordance with a predetermined priority to investors holding various CMO tranches. By allocating the principal and interest cash flows from the underlying collateral among the separate CMO tranches, different classes of bonds are created, each with its own stated maturity, estimated average life, coupon rate, and prepayment characteristics. Notwithstanding the importance of the CMO structure to an evaluation of the timing and amount of cash flows, it is essential to understand the coupon rates on the mortgages underlying the CMO to assess the prepayment sensitivity of the CMO tranches.

C. Residuals, in the traditional sense, are claims on any excess cash flows from a CMO issue or other asset-backed security remaining after the payments due to the holders of the other classes and after trust administrative expenses have been met. The economic value of a residual is a function of the present value of the anticipated excess cash flows. These cash flows are highly sensitive to prepayments and existing levels of market interest rates, and the mortgages underlying the CMO must be understood in order to assess this sensitivity. Accordingly, most of these residuals meet the definition of high-risk in this policy. Other factors affecting the market value of residuals include a lack of liquidity and a wide bid-ask price spread.

In addition, the 1986 legislation creating the REMIC structure requires that one class of each REMIC issue be designated the residual interest for tax purposes. Some of these REMIC residuals are not residuals in the traditional sense.

However, these REMIC residuals also are subject to this policy statement.

Definition of "High-Risk Mortgage Security"

In general, any mortgage derivative product that exhibits greater price volatility than a benchmark fixed rate thirty-year mortgage-backed pass-through security will be deemed to be high risk. For purposes of this policy statement, a "high-risk mortgage security" is defined as any mortgage derivative product that at the time of purchase, or at a subsequent testing date, meets any of the following tests.[5] In general, a mortgage derivative product that does not meet any of the three tests below will be considered to be a "nonhigh-risk mortgage security."

(1) Average Life Test

The mortgage derivative product has an expected weighted average life greater than 10.0 years.

(2) Average Life Sensitivity Test

The expected weighted average life of the mortgage derivative product:

a. Extends by more than 4.0 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or

b. Shortens by more than 6.0 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) Price Sensitivity Test

The estimated change in the price of the mortgage derivative product is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.[6]

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[5] When the characteristics of a mortgage derivative product are such that the first two tests cannot be applied (such as with IOs), the mortgage derivative product remains subject to the third test.

[6] When performing the price sensitivity test, the same prepayment assumptions and same cash flows that were used to estimate average life sensitivity must be used. The only additional assumption is the discount rate assumption.

First, assume that the discount rate for the security equals the yield on a comparable average life U.S. Treasury security plus a constant spread. Then, calculate the spread over Treasury rates from the bid side of the market for the mortgage derivative product. Finally, assume the spread remains constant when the Treasury curve shifts up

Continued

In applying any of the above tests, all of the underlying assumptions (including prepayment assumptions) for the underlying collateral must be reasonable. All of the assumptions underlying the analysis must be available for examiner review. For example, if an institution's prepayment assumptions differ significantly from the median prepayment assumptions of several major dealers as selected by examiners, the examiners may use these median prepayment assumptions in determining if a particular mortgage derivative product is high risk.

The above tests may be adjusted in the event of a significant movement in market interest rates or to fairly measure the risk characteristics of new mortgage-backed products. Furthermore, each agency reserves the right to take such action as it deems appropriate to prevent circumvention of the definition of a high-risk mortgage security and other standards set forth in this policy statement.

Generally, a CMO floating-rate debt class will not be subject to the average life and average life sensitivity tests described above if it bears a rate that, at the time of purchase or at a subsequent testing date, is below the contractual cap on the instrument. (An institution may purchase interest rate contracts that effectively uncap the instrument.) For purposes of this policy statement, a CMO floating-rate debt class is a debt class whose rate adjusts at least annually on a one-for-one basis with the debt class's index. The index must be a conventional, widely-used market interest rate index such as the London Interbank Offered Rate (LIBOR). Inverse floating rate debt classes are not included in the definition of a floating rate debt class.

Supervisory Policy for Mortgage Derivative Products

Prior to purchase, a depository institution must determine whether a mortgage derivative product is high-risk, as defined above. A prospectus supplement or other supporting analysis that fully details the cash flows covering each of the securities held by the institution should be obtained and analyzed prior to purchase and retained for examiner review. In any event, a prospectus supplement should be obtained as soon as it becomes available.

Nonhigh-risk Mortgage Securities

Mortgage derivative products that do not meet the definition of high-risk mortgage securities at the time of purchase should be reported as investments, held-for-sale assets, or trading assets, as appropriate.

Institutions must ascertain and document prior to purchase and no less frequently than annually thereafter that nonhigh-risk mortgage securities that are held for investment remain outside the high-risk category. If an institution is unable to make these determinations through internal analysis, it must use information derived from a source that is independent of the party from whom the product is being purchased. Standard industry calculators used in the mortgage-related securities marketplace are acceptable and are considered independent sources. In order to rely on such independent analysis, institutions are responsible for ensuring that the assumptions underlying the analysis and the resulting calculation are reasonable. Such documentation will be subject to examiner review.

A mortgage derivative product that was not a high-risk mortgage security when it was purchased as an investment may later fall into the high-risk category. If this occurs, the mortgage derivative product must be redesignated as held for sale or trading. Once a mortgage derivative product has been designated as high-risk, it may be redesignated as nonhigh-risk only if, at the end of two consecutive quarters, it does not meet the definition of a high-risk mortgage security. Upon redesignation as a nonhigh-risk security, it does not need to be tested for another year.

High-Risk Mortgage Securities

An institution may only acquire a high-risk mortgage derivative product to reduce its overall interest rate risk. (Institutions meeting the guidance established in footnote 4 may also purchase these securities for trading purposes.) An institution that has acquired high-risk mortgage securities to reduce interest rate risk needs to manage its holdings of these securities because of their substantial prepayment and average life variability. Such management implies that the institution does not have both the intent and ability to hold high-risk mortgage securities for long-term investment purposes. Accordingly, high-risk mortgage securities that are being used to reduce interest rate risk should not be reported as investments at amortized cost, but must be reported as trading assets at market value or as held-for-sale assets at the lower of cost or market value.

In appropriate circumstances, examiners may seek the orderly divestiture of high-risk mortgage securities that do not reduce interest rate risk. These securities must be reported as held-for-sale assets at the lower of cost or market value.

An institution that owns or plans to acquire high-risk mortgage securities must have a monitoring and reporting system in place to evaluate the expected and actual performance of such securities. The institution must conduct an analysis that shows that the proposed acquisition of a high-risk mortgage security will reduce the institution's overall interest rate risk. Subsequent to purchase, the institution must evaluate at least quarterly whether this high-risk mortgage security has actually reduced interest rate risk.

The institution's analyses performed prior to the purchase of high-risk mortgage securities and subsequently thereafter must be fully documented and will be subject to examiner review. This review will include an analysis of all assumptions used by management regarding the interest rate risk associated with the institution's assets, liabilities and off-balance sheet positions. Analyses performed and records constructed to justify purchases on a post-acquisition basis are unacceptable and will be subject to examiner criticism. Reliance on analyses and documentation obtained from a securities dealer or other outside party without internal analyses by the institution are unacceptable and reliance on such third-party analyses will be subject to examiner criticism.

Management should also maintain documentation demonstrating that it took reasonable steps to assure that the prices paid for high-risk mortgage securities represented fair market value. Generally, price quotes should be obtained from at least two brokers prior to executing a trade. If, because of the unique or proprietary nature of the transaction or product, or for other legitimate reasons, price quotes cannot be obtained from more than one broker, management should document the reasons for not obtaining such quotes.

In addition, a depository institution that owns high-risk mortgage securities must demonstrate that it has established the following:

(1) A board-approved portfolio policy which addresses the goals and objectives the institution expects to achieve through its securities activities, including interest rate risk reduction

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or down 300 basis points. Discounting the aforementioned cash flows by their respective discount rates estimates a price in the plus and minus 300 basis point environments.

The initial price will be determined by the offer side of the market and used as the base price from which the 17 percent price sensitivity test will be measured.

objectives with respect to high-risk mortgage securities;

(2) Limits on the amounts of funds that may be committed to high-risk mortgage securities;

(3) Specific financial officer responsibility for and authority over securities activities involving high-risk mortgage securities;

(4) Adequate information systems;

(5) Procedures for periodic evaluation of high-risk mortgage securities and their actual performance in reducing interest rate risk; and

(6) Appropriate internal controls.

The board of directors, or an appropriate committee thereof, and the institution's senior management should regularly (at least quarterly) review all high-risk mortgage securities to determine whether these instruments are adequately satisfying the interest rate risk reduction objectives set forth in the portfolio policy. The depository institution's senior management should be fully knowledgeable about the risks associated with prepayments and their subsequent impact on its high-risk mortgage securities.

Failure to comply with this policy will be viewed as an unsafe and unsound practice.

Purchases of high-risk mortgage securities prior to February 10, 1992 generally will be reviewed in accordance with previously-existing supervisory policies.

Securities and other products, whether carried on or off the balance sheet (such as CMO swaps, but excluding servicing assets), having characteristics similar to those of high-risk mortgage securities will be subject to the same supervisory treatment as high-risk mortgage securities.

Supervisory Policy for Other Zero-Coupon, Stripped or Original Issue Discount (OID) Products

Zero-coupon, "stripped" and certain Original Issue Discount ("OID") securities are priced at large discounts to their face value prior to maturity and exhibit significant price volatility. "Stripped" securities are the interest or principal portions of U.S. Government obligations (which are separated and sold to depository institutions in the form of stripped coupons or stripped bonds (principal)), STRIPS, and such proprietary products as CATs or TIGRs.[7] Also, deep discount OID bonds have been issued by a number of municipal entities.

Although considered free from credit risk if issued directly by the U.S. Government, longer maturities of zero coupon, stripped, and deep discount OID products (generally, remaining maturities exceeding ten years) have displayed extreme price volatility. Therefore, disproportionately large long-maturity holdings of these instruments, in relation to the total investment portfolio or total capital of the depository institution, are considered an imprudent investment practice. Such holdings will be subject to criticism by examiners who may seek the orderly disposal of some or all of these securities. Securities slated for disposal must be reported as held-for-sale assets at the lower of cost or market value.

Other Considerations

Several states have adopted, or are considering, regulations that prohibit state-chartered banks from purchasing interest-only strips or other securities discussed above. Accordingly, state-chartered institutions should consult with their state regulator concerning the permissibility of these purchases.

Dated: January 28, 1992.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 92-2445 Filed 1-31-92; 8:45 am]

BILLING CODE 6210-01-M

[7] STRIPS (Separate Trading of Registered Interest and Principal of Securities) is the U.S. Treasury program that permits separate trading and ownership of the interest and principal payments on certain long-term U.S. Treasury note and bond issues that are maintained in the book-entry system operated by the Federal Reserve Banks. CATs (Certificates of Accrual on Treasury Securities) and TIGRs (Treasury Investment Growth Receipts) are proprietary names for a form of coupon stripping that has been developed by securities firms. The securities firm purchases U.S. Treasury securities, delivers them to a trustee, and sells receipts representing the rights to future interest and/or principal payments from the U.S. Treasury securities held by the trustee.

FEDERAL MARITIME COMMISSION

Jacksonville Port Authority, et al.

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200607.

Title: Jacksonville Port Authority/ Norwegian Specialized Autocarriers Terminal Agreement.

Parties: Jacksonville Port Authority Norwegian Specialized Autocarriers.

Synopsis: The Agreement, filed January 22, 1992, provides charges for parking and wharfage of Private Owned Vehicles (cargo). The Agreement includes a percentage discount for volume shipments of 50 vehicles or more from a single dealer to a single consignee.

By Order of the Federal Maritime Commission.

Dated: January 28, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-2419 Filed 1-31-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-04]

Interdean, A.G. v. Trans-Atlantic American Flag Liner Operators, et al., Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Interdean, A.G. ("Complainant") against Trans-Atlantic American Flag Liner Operators ("TAFFLO"), Sea-Land Service, Inc., Lykes Bros. Steamship Co., Inc., and Farrell Lines, Inc. ("Respondents") was served January 28, 1992. Complainant alleges that Respondents engaged in violations of sections 10(b) (6), (10), (11) and (12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(6), (10), (11) and (12), by publishing in the TAAFLO tariff a time/volume rate program for U.S. military household goods that establishes both a minimum volume requirement so high that it can only be met by one shipper and an unreasonably large spread between such rates and TAAFLO's standard rates, with no legitimate economic reason.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on

the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 28, 1993, and the final decision of the Commission shall be issued by May 28, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-2488 Filed 1-31-92; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 208]

Public Health Conference Support Grant Program

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of funds in Fiscal Year 1992 for the Public Health Conference Support Grant Program. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to all of Healthy People 2000's priority areas, except HIV Infection (see announcement #201 for HIV entitled, "Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention," published December 13, 1991, (56 FR 65162). (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under section 301 (42 U.S.C. 241) and section 310 (42 U.S.C. 242n) of the Public Health Service Act.

Eligible Applicants

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, public, private organizations, State, local government agencies, and small, minority- and or woman-owned businesses are eligible for these grants.

Availability of Funds

We anticipate approximately $200,000 will be available in Fiscal Year 1992 to fund approximately 12 awards. The awards range from $1,000 to $30,000 with the average award being approximately $15,000. The awards will be made for a 12-month budget and project period. Funding estimates may vary and are subject to change.

1. Grant funds may be used for direct cost expenditures: Salaries, speaker fees, rental of necessary equipment, registration fees, and transportation costs (not to exceed economy class fare) for non-Federal employees.

2. Funds may not be used for the purchase of equipment, payments of honoraria, alterations or renovations, organizational dues, entertainment/personal expenses, cost of travel and payment of a full-time Federal employee, per diem or expenses other than local mileage for local participants, or reimbursement of indirect costs. Although the practice of handing out novelty items at meetings is often employed in the private sector to provide participants with souvenirs, Federal funds cannot be used for this purpose.

Purpose

The purpose of the conference support grants is to provide partial support for specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs. Applications are being solicited for conferences on: (1) Chronic disease prevention; (2) infectious disease prevention; (3) control of injury or disease associated with environmental, home, and workplace hazards; (4) environmental health; (5) occupational safety and health; (6) control of risk factors such as poor nutrition, smoking, lack of exercise, high blood pressure, stress and drug misuse; (7) health education and promotion; and (8) laboratory practices. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. In addition, the CDC will reserve the right to approve or reject the content of the full agenda, speaker selection, and site selection. The CDC funds will not be expended for non-approved portions of meetings. Contingency awards will be made allowing usage of only 10% of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds for costs associated with preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda. CDC reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

Because CDC's mission and programs relate to the promotion of health and the prevention of disease, disability, and premature death, only conferences focusing on such programmatic areas will be considered. Those topics concerned with health care and health services issues and areas other than prevention should be directed to other public health agencies.

Program Requirements

A. Manage all activities related to program content (e.g., objectives, topics, attendees, session design, workshops, special exhibits, speakers, fees, agenda composition and printing). Many of these items may be developed in concert with assigned CDC project personnel.

B. Provide draft copies of the agenda and proposed ancillary activities to CDC for approval. Submit copy of final agenda and proposed ancillary activities to CDC for approval.

C. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press, etc.). CDC must review and approve of any materials with reference to CDC involvement or support.

D. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, etc.).

E. Plan, negotiate, manage conference site arrangements, including all audio-visual needs.

F. Develop and conduct education and training programs on prevention.

G. Participate in the analysis of data from conference activities that pertain to the impact on prevention.

H. Collaborate with CDC staff in reporting and disseminating results and relevant prevention education and training information to appropriate Federal, State, and local agencies, and the general public.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (TOTAL 100 POINTS):

A. Proposed Program and Technical Approach: 25 Points

Evaluation will be based on the relevance of conference to CDC's mission and program activities.

B. Applicant Capability: 10 Points

Evaluation will be based on the adequacy of applicant's resources (additional sources of funding, organization's strengths, staff time, etc.) available for the project.

C. The Qualification of Program Personnel: 20 Points

Evaluation will be based on the extent to which the proposal has described (a) the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership; (b) the competence of associate staff persons, discussion leaders, and speakers and presenters to accomplish the proposed conference; and (c) the degree to which the application demonstrates the knowledge of nationwide information and education efforts currently underway which may affect, and be affected by, the proposed conference.

D. Conference Objectives: 25 Points

Evaluation will be based on the overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall workplan and timetable for accomplishment. Evaluation will also be based on the likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of operational plan.

E. Evaluation Methods: 20 Points

Evaluation will be based on the extent to which evaluation mechanisms for the conference will be able to adequately assess increased knowledge, attitudes, and behaviors of the target attendees.

F. Budget Justification and Adequacy of Facilities: Not Scored

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing and proposed facilities and resources for conducting conference activities.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

The original and two copies of the application must be submitted on PHS Form 5161–1 and in accordance with the schedule below. The schedule also sets forth the earliest possible award date:

Application deadline	Earliest possible award date
March 15, 1992	June 30, 1992.
July 1, 1992	September 30, 1992.

Applications must be submitted on or before the deadline date to: Mr. Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications that do not meet the criteria in 1.a. or 1.b., above are considered late applications and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number, and will need to refer to Announcement Number 208. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Bill Foley, Grant Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842–6630.

Please refer to Announcement Number 208 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the **Introduction** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238).

Dated: January 27, 1992.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 92–2459 File 1–31–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91P–0482]

Low-Moisture Part-Skim Mozzarella Cheese Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Beatrice Cheese, Inc., to market test a product designated as "low-moisture part-skim mozzarella cheese, contains ultrafiltered skim milk," that deviates from the U.S. standard of identity for low-moisture part-skim mozzarella cheese (21 CFR 133.158). The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than May 4, 1992.

FOR FURTHER INFORMATION CONTACT: James Lin, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0122.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Beatrice Cheese, Inc., 770 Springdale Rd., Waukasha, WI 53186.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for low-moisture part-skim mozzarella cheese in 21 CFR 133.158 in that a protein concentrate, resulting from ultrafiltration of skim milk, is added to adjust the fat content of the milk used in making the finished product. The protein concentrate is referred to hereinafter as "skim milk protein concentrate (SMPC)."

SMPC is prepared by the partial removal of nonprotein constituents from skim milk with ultrafiltration, a physical separation technique, so that the finished dry SMPC contains not less than 70 percent protein. Safe and suitable pH adjusting ingredients are used to adjust the acidity of SMPC. Beatrice Cheese, Inc., stated that, in pilot plant trials, there were virtually no differences in functional characteristics and chemical properties between the cheese made using SMPC and that made using nonfat dry milk.

The purpose of this temporary permit is to allow distribution of low-moisture part-skim mozzarella cheese in which the cheese milk used would be standardized with the addition of SMPC. Beatrice Cheese, Inc., maintained that the use of SMPC will allow the test of an efficient method of standardizing the cheese milk. Beatrice Cheese, Inc., further stated that the use of SMPC could result in a significant cost savings to the industry with the potential benefit to consumers.

For the purpose of this permit, the name of the test product is "low-moisture part-skim mozzarella cheese, contains ultrafiltered skim milk." The label bears nutrition information in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 20,000,000 pounds (9,071,940 kilograms) of the test product. The product will be manufactured in Beatrice Cheese, Inc., plants at the following locations: 211 E. Depot St., Marshfield, WI 54449; 445 Jefferson St., Fredericksburg, IA 50630; 240 North Ave., Gustine, CA 95322; Mitchell & Gillett St., Preston, IA 52069; 1002 MacArthur Rd., Whitehall, PA 18052; 1515 Puyallup St., P.O. Box 1150, Sumner, WA 98390–0229, and distributed nationwide.

Each of the ingredients used in the food must be declared on the label as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than May 4, 1992.

Dated: January 22, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–2484 Filed 1–31–92; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 91G–0495]

American Maize-Products Co. and Roquette Corp.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the law offices of Keller and Heckman, on behalf of American Maize-Products Co. and Roquette Corp., have filed a petition (GRASP 1G0376) proposing that B-cyclodextrin be affirmed as generally recognized as safe (GRAS) for use as a formulation aid in the production of dry flavoring mixes for preparation of cocktail-type alcoholic beverages.

DATES: Written comments by April 3, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald J. Buonopane, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409 (21 U.S.C. 321(s), 348) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that the law offices of Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001, on behalf of American Maize-Products Co., 1100 Indianapolis Blvd., Hammond, IN 46320–1094, and Roquette Corp., 1550 Northwestern Ave., Gurnee, IL 60031–2392, have filed a petition (GRASP 1G0376) proposing that B-cyclodextrin be affirmed as GRAS for use as a formulation aid in the production of dry flavoring mixes for preparation of cocktail-type alcoholic beverages.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 (21 CFR 170.30 and 170.35) is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability of B-cyclodextrin for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before April 3, 1992, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 22, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–2395 Filed 1–31–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA is announcing the following district consumer exchange meeting: Minneapolis District Office, chaired by John Feldman, District Director. The topic to be discussed is food labeling reform.

DATES: Tuesday, February 4, 1992, 9 a.m. to 11 a.m.

ADDRESSES: Mosinee Nutrition Center, 503 High St., Mosinee, WI 54455.

FOR FURTHER INFORMATION CONTACT: Steve Davis, Public Affairs Specialist, Food and Drug Administration, U.S. Courthouse, 517 East Wisconsin Ave., rm. SB–06, Milwaukee, WI 53202, 414–297–3097.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for

current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 28, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-2396 Filed 1-31-92; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BPD-740-PN]

RIN 0938-AF56

Medicare Program; Recognition of the Joint Commission on the Accreditation of Healthcare Organizations Standards for Home Care Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: In this notice, we propose to recognize the accreditation program of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. We have found that the accreditation process of this organization provides reasonable assurance that HHAs accredited by it meet the conditions required by Federal law and regulations. As a result of this determination, HHAs accredited by JCAHO would be "deemed" to meet the Medicare conditions of participation for HHAs, and therefore would not be subject to routine inspection by State survey agencies to determine their compliance with Federal requirements. They would, however, be subject to validation and complaint investigation surveys.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 3, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-740-PN, P.O. Box 26676, Baltimore, Maryland 21207. If you prefer, you may deliver your written comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW. Washington, DC 20201,

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-740-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: John J. Thomas, (301) 966-4623.

SUPPLEMENTARY INFORMATION:

I. Background

A. Determining Compliance—Surveys and Deeming

Providers of health care services participate in the Medicare and Medicaid programs under provider agreements with HCFA (for Medicare) and State Medicaid agencies (for Medicaid). Generally, in order to enter into a provider agreement, an entity must first be certified by a State survey agency as complying with the conditions of participation or standards set forth in Federal law and regulations. Providers are subject to regular surveys by State agencies to determine whether the provider continues to meet these requirements.

The Social Security Act (the Act) includes provisions that permit certain providers of services to be exempt from routine surveys by the State survey agencies to determine compliance with the Medicare conditions of participation. Specifically, section 1865(a) of the Act permits providers which are accredited by a national accrediting organization to be "deemed" to meet the applicable Medicare conditions of participation. This section states that if the Secretary finds that the accreditation of the provider by its national accreditation body provides reasonable assurance that the Medicare conditions of participation are met, then the Secretary may "deem" the conditions of participation to be met.

A national accrediting organization may request the Secretary to recognize its program as providing reasonable assurance that the Medicare conditions of participation are met. The Secretary then examines the accrediting body's standards as well as its survey and accreditation process to determine if there is reasonable assurance that providers accredited by the organization meet the Medicare conditions of participation as HCFA would have applied them. If the Secretary recognizes the accrediting organization in this manner, any provider accredited by the national accrediting body will be "deemed" to meet the Medicare conditions of participation as the Secretary has recognized that the national accrediting body provides reasonable assurance that the conditions are met.

To implement section 1865(a) generally, the Secretary published a notice of proposed rulemaking in the **Federal Register** on December 14, 1990 (55 FR 51434). This proposed rule set forth the procedure that HCFA would use to review and approve national accrediting organizations that wish to be recognized as providing reasonable assurance that Medicare conditions are met. It also set forth the standards and procedures that HCFA would use to remove its approval of a national accrediting organization.

In section 4039(f) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), Congress imposed a special requirement on HCFA's approval of national accrediting organizations. Under that section, our publication of a final rule deeming a provider, which is necessary to implement section 1865(a) of the Act, must follow publication of the proposed rule by at least 6 months. Therefore, HCFA may not permit deeming generally until the proposed rule published on December 14, 1990 is published in final form to be effective no sooner than June 14, 1991.

The purpose of this proposed notice is to provide notice of our intent to recognize the accreditation program of the Joint Commission of the Accreditation of Healthcare Organizations (JCAHO), a national accrediting organization, but only to the extent that it accredits home health agencies. This proposed notice is narrower than the proposed rule that was published on December 14, 1990, because that proposed rule applied to national accrediting organizations generally.

Because HCFA has determined that the JCAHO provides reasonable assurance that HHAs accredited by the JCAHO meet Medicare conditions, and because the December 14, 1990 proposed rule has not yet been published in final form, we are publishing this proposed notice. Under section 4039(f) of Public Law 100-203, final approval for JCAHO (if it occurs) will be complete with the publication of a final notice effective at the earlier of:

- Six months after the date of the publication of this proposed notice in the **Federal Register**; or

• Anytime after the publication of the December 14, 1990 proposed notice in final form in the **Federal Register**, which may be effective no earlier than June 14, 1991.

On December 31, 1987, we published in the **Federal Register** (52 FR 49510) a notice proposing to approve the accreditation programs of the National League for Nursing (NLN) and JCAHO. (Since that time NLN has incorporated the Community Health Accreditation Program (CHAP) subsidiary, and it is CHAP that conducts NLN's HHA survey and accreditation activities.) At about the same time, Congress enacted Public Law 100–203, which extensively revised the statutory requirements for the Medicare conditions of participation for home health agencies (HHAs) as well as the Medicare HHA survey and certification procedures. These broad statutory changes necessitated the development of the revised HHA conditions of participation as well as the surveyor interpretive guidelines and survey and certification regulations. Because HCFA's approval of the 1987 proposal was based on a comparison of the JCAHO an NLN accreditation standards with Medicare requirements which had become obsolete, it was impossible to finalize the approval until the statutory changes had been developed and incorporated into regulations and guidelines.

JCAHO has revised its accreditation standards to reflect the changes initiated by Public Law 100–203. Because we recently completed the development of the regulations and guidelines necessitated by Public Law 100–203, we were able to compare the accreditation standards of JCAHO to the relevant Medicare requirements in order to determine whether accreditation by JCAHO provides the required reasonable assurance that the Medicare requirements are met. We intend to examine and discuss the deeming of the CHAP standards in a separate proposed notice.

B. Home Health Agency Conditions of Participation and Requirements

The regulations specifying the Medicare conditions of participation for HHAs are located at 42 CFR part 484. These requirements implement the elements of the statutory definition of an HHA contained in section 1861(o) of the Act and the conditions of participation listed in section 1891 of the Act. In addition to the specific requirements it sets forth, section 1861(o) also contains general authorization for the Secretary to prescribe other requirements that are found necessary to protect the health and safety of the individuals who are served by HHAs. Additional requirements were developed under this authority and also are included in the conditions of participation contained in regulations. An HHA must meet the conditions of participation contained in the law and regulations to participate in the Medicare program.

II. Proposed Approval of JCAHO Accreditation

We believe that accreditation by JCAHO provides reasonable assurance that an HHA meets the Medicare conditions of participation for HHAs. We have reached this conclusion after a thorough examination of the JCAHO's accreditation program, including its standards and survey and accreditation process, which we discuss below.

Our initial comparison of the Medicare conditions of participation and survey procedures to the JCAHO home care standards, scoring guidelines, and survey procedures early this year revealed areas in which the JCAHO standards are more stringent than the Medicare requirements and areas in which Medicare requirements are more stringent than those of JCAHO. After our review of the 1991 JCAHO standards, scoring guidelines, and survey procedures (JCAHO's "Home Care Standards for Accreditation", "Accreditation Manual for Home Care", and "Key to Quality" respectively), we met with JCAHO to discuss the differences between the Medicare requirements and JCAHO standards. JCAHO then revised its standards, scoring guidelines, and survey procedures to reflect more closely the substance of the Medicare conditions and the process by which they are applied. The changes were adopted by JCAHO and forwarded to us in April 1991.

After receipt of the revised JCAHO materials, we compared the newly revised JCAHO standards, guidelines, and procedures with the Medicare HHA conditions of participation and survey procedures. After reviewing JCAHO's revised standards, guidelines, and procedures, we were convinced that the revised program provided reasonable assurance that all of Medicare's conditions of participation and survey requirements are contained in the JCAHO standards and survey procedures.

In evaluating the JCAHO accreditation standards and survey processes to determine if there was a reasonable assurance that the HHAs it accredits meet Medicare conditions of participation, we looked at both the individual JCAHO requirements and the overall effects of the JCAHO accreditation process. We examined the overall effects because we recognize that positive health care outcomes are achieved not only through adherence to specific requirements, but also through achievement of specific and general results. Accordingly, we first did a point by point comparison of the Medicare and JCAHO requirements to determine which ones could be directly matched and to establish whether the JCAHO standards were the same as the Medicare requirements. In cases where there were no directly comparable requirements, we looked at the effects of the combinations of related JCAHO requirements, and at the scoring guidelines and the survey process to determine whether the accreditation process as a whole provides us with reasonable assurance that Medicare requirements would be met.

In several instances, we referred to the scoring guidelines which accompany the JCAHO standards to assure ourselves of the JCAHO standards' conformity with the Medicare conditions. The scoring guidelines express parameters or common conditions that JCAHO surveyors use to make judgments and assign scores to key requirements. Although scoring guidelines are not standards, they set forth the intent of the standard and describe the JCAHO's expectations as to how a particular standard is to be met. These guidelines are consistently utilized by JCAHO surveyors in determining the score which will be applied to assess compliance with each JCAHO standard. When a JCAHO surveyor evaluates a standard as having partial, minimal, or noncompliance that is, when the scoring guideline has not been met or has been met only partially), a written recommendation results, and the accredited organization must then demonstrate evidence of correction of this deficiency and compliance with the standard within specified timeframes. We found that, in those instances where the JCAHO standard did not exactly duplicate a Medicare requirement (often because the JCAHO standard was a more general statement than the Medicare requirement), the scoring guidelines established a specific method of compliance with the standard that is fully consistent with the Medicare requirements. Therefore, the HHA must demonstrate compliance with a scoring guideline comparable to the applicable Medicare requirement before the JCAHO surveyor can find that the overall JCAHO standard has been met.

With regard to certain differences between Medicare and JCAHO survey

procedures, JCAHO proposed to establish a separate survey process that conforms with the Medicare survey requirements for those JCAHO-accredited HHAs that wish to use their accreditation for purposes of participation in Medicare. JCAHO proposes, and we agree, that HHAs that are surveyed and accredited under its revised program would be "deemed" to meet the Medicare conditions of participation for HHAs, while those providers that elect to continue to be accredited under the original system would not be "deemed". Under this plan, those home care providers that do not or can not participate in Medicare as an HHA and are therefore currently not subject to Medicare survey (for example, durable medical equipment suppliers) would continue to be reviewed by the JCAHO, but would not be subject to JCAHO's Medicare-style HHA survey. The JCAHO would assure that its separate accreditation systems are clearly distinguishable to avoid any misunderstandings by the public. We discuss the differences between the Medicare and JCAHO survey requirements at greater length below.

In most cases, we were able to determine that the accreditation standards, scoring guidelines, and survey processes were equal or superior to Medicare requirements based on a simple comparison of standards. In some cases, however, our conclusions were based upon a more complex comparison of the systems. The discussion that follows details the differences between the Medicare requirements and the requirements of JCAHO which require such analysis. It also specifies certain stipulations and restrictions that we would establish in connection with our decision.

A. Differences Between JCAHO Standards and Medicare Conditions of Participation

When comparing the Medicare conditions of participation with the revised JCAHO standards for HHAs, we found two areas in which either JCAHO's standards or its scoring guidelines or both varied appreciably from the Medicare conditions of participation. Both of these requirements are found in 42 CFR 484.4 ("Personnel qualifications.") of the Medicare conditions of participation.

The first area of discrepancy is that the personnel qualifications in the JCAHO standards require only certification "by a nationally recognized accrediting body" for an occupational therapist as opposed to the more detailed qualifications contained in the Medicare conditions at § 484.4. Section 484.4 requires an occupational therapist to graduate from an occupational therapy curriculum that meets certain standards, to be eligible for the National Registration Examination of the American Occupational Therapy Association, to have State licensure, and to have 2 years experience. As the JCAHO applies this requirement, it includes—

- Eligibility for the National Registration Examination of the American Occupational Therapy Association;
- Graduation from an accredited occupational therapy curriculum; and
- Meeting State requirements for licensure.

We believe that these requirements provide us with reasonable assurance that an individual furnishing occupational therapy services for a JCAHO-accredited HHA would meet the personnel qualifications found in the Medicare conditions of participation.

The second area of discrepancy is that the JCAHO standards allow speech therapy, occupational therapy, and audiology services to be furnished by individuals who possess the "documented equivalent education, training, and/or experience" in place of graduation from a program approved by a nationally recognized accrediting body (or certification by such a body). The Medicare conditions at § 484.4 contain specific requirements which do not recognize equivalencies in training, education, or experience.

The JCAHO standards recognize that professional qualification may be demonstrated through a certification (or other formal credentialing) program administered by an appropriate national private professional membership or accrediting organization. They also recognize that equivalent qualification may be demonstrated by documented evidence of education or training or experience or by a combination of these factors that is equivalent to that required for award of the certification (or other professional credential) in question. They further require the individual furnishing the therapy services to meet any current legal requirements of licensure or registration.

Although these requirements differ from that of the Medicare conditions, we believe that they do provide reasonable assurance that the Medicare standards have been met. The specific JCAHO requirement that all licensure and registration requirements must be met prevents unqualified or improperly trained individuals from furnishing therapy services on behalf of the accredited HHA. JCAHO materials also state that their recognition of more than one means of demonstrating qualification does not result in recognition of more than one qualification standard. In other words, all therapists must still meet the same standard of proficiency regardless of their educational or professional experience. Therefore, we are assured that individuals furnishing therapy services for a JCAHO-accredited HHA meet the qualification and proficiency standards that are sought by the Medicare conditions. It is also important to note that the revised JCAHO standards specifically require physical therapists, physical therapy assistants, social workers, and social work assistants to meet the qualifications criteria set forth in the Medicare HHA conditions of participation.

B. Differences Between JCAHO Survey and Accreditation and Medicare Survey and Certification Procedures

In HCFA's review of JCAHO's survey and accreditation process, we determined that there are differences that need to be addressed, but that overall, the JCAHO process contained all of the elements necessary to conclude that JCAHO's survey and accreditation process is comparable to HCFA's. The following is a discussion of the HCFA survey and certification process and the differences found between it and JCAHO's survey and accreditation process.

The Medicare survey and certification process, as required by statute, is outcome-oriented. The specifics of the process are outlined in section 1891 of the Act and in sections 2196 through 2202 of the "State Operations Manual" (SOM) used by State surveyors. The Medicare process requires that a standard survey be conducted of each HHA not later than 15 months after the date of its previous standard survey. The Statewide average of the interval between the standard surveys of individual HHAs must not exceed 12 months. The standard survey also is conducted for HHAs initially applying for Medicare approval.

The composition of the standard survey as outlined in the SOM includes five complete Medicare conditions of participation and a part of another condition. The standard survey includes, to the extent practicable, the selection of a case-mix stratified sample of individuals furnished items or services by the HHA with visits to the homes of some patients after receiving the consent of these patients. The purpose of the process is to evaluate the HHA by using a standardized reproducible

assessment instrument(s) to determine whether the quality and scope of items and services furnished by the HHA to these individuals attained and maintained their highest practicable functional capacity as reflected in their plans of care and clinical records. The standard survey is also a survey of the quality of care and services furnished by the HHA as measured by indicators of medical, nursing, and rehabilitative care. The SOM describes the number of records to be reviewed by the State surveyor for record reviews and of home visits depending upon the size of the HHA.

An HHA that is found under a standard survey to have provided substandard care is subject to an extended survey. An extended survey includes conditions or parts of conditions not evaluated during the standard survey. The purpose of the extended survey is to review and identify the policies and procedures that produced the substandard care and to determine whether the HHA has complied with Federal requirements. The statute also allows Medicare to conduct an extended or partially extended survey of an HHA at the discretion of the State agency or the Secretary. If such a survey is conducted, it must be immediately after the standard survey, or, if this is not practical, no later than 2 weeks after the date of completion of the standard survey.

The Medicare program has very specific procedures for ensuring that deficiencies identified during a survey of an HHA are corrected. All deficiencies that are a violation of the Medicare statute and regulations are cited and sent to the HHA in writing on a "Statement of Deficiencies and Plan of Correction Form" (HCFA–2567) within 10 calendar days after the survey. The HHA is allowed 10 calendar days to respond to the citation, including an explanation of how and when it plans to correct the deficiencies.

HCFA may take adverse action when an HHA is found to be out of compliance with the Medicare conditions of participation. Adverse action may include alternative sanctions against the HHA or termination of the HHA's participation in the Medicare program or both. An evidentiary hearing may be held before an Administrative Law Judge if an HHA contests HCFA's decision to terminate its Medicare provider agreement or to impose alternative sanctions. The State or Federal surveyor who participates in a survey that results in HCFA's decision to take adverse action against an HHA may be called as a witness in such a hearing, and surveyor findings may be admitted as evidence. If adverse action is taken by HCFA after JCAHO accreditation has been withdrawn, JCAHO surveyors would be available to serve as witnesses if needed.

When comparing the Medicare survey and certification process with JCAHO's survey and accreditation process for HHAs, we found five areas in which JCAHO's accreditation process varies from the Medicare process.

The first area of discrepancy regarding the survey and certification process is that JCAHO maintains a 3-year accreditation cycle and notifies organizations 30 days in advance of the survey date. That is, if an HHA is found to be in substantial compliance with JCAHO's standards, that organization is awarded accreditation for 3 years (with or without recommendations). The HCFA survey for HHAs, on the other hand, is unannounced and is conducted annually, ranging from 9 to 15 months between standard surveys of individual HHAs.

Regarding this discrepancy, JCAHO proposes to implement an annual, unannounced survey process for those HHAs which request the use of JCAHO's accreditation for Medicare deeming purposes. These HHAs would be required to undergo annual, unannounced surveys for the purposes of meeting Medicare conditions of participation for HHAs. This designation will be distinguished in the accreditation award letter and official report, as well as by a separate accreditation certificate. We believe that these revisions, once adopted, provide us with reasonable assurance that the timing and frequency of JCAHO's surveys of HHAs requesting JCAHO accreditation for Medicare deeming purposes would meet the requirements for the annual, unannounced Medicare surveys of HHAs performed by the State survey agencies.

The second area of discrepancy regarding the survey and certification process is that JCAHO presently does not use a standardized functional assessment instrument in its survey and accreditation of HHAs. HCFA, however, does use such an instrument, as required by section 1891 of the Act. JCAHO has assured us that it believes the newly-implemented HCFA instrument is compatible with its own survey process and standards for accrediting HHAs and has agreed to use it. JCAHO has also assured us that its HHA surveyors will receive an orientation to this instrument and training in how to use it after JCAHO accreditation has been recognized by the Secretary. We believe that JCAHO's adoption of HCFA's assessment instrument and use of the instrument by JCAHO surveyors eliminates the discrepancy between the JCAHO requirements and the requirements for the HCFA instrument and its use by State agency surveyors.

The third area of discrepancy regarding the survey and certification process is that, although JCAHO's HHA survey and accreditation process provides for a review of a case-mix, stratified, random sample of patients' clinical records and requires from four to six patient home visits, we have determined that JCAHO's sample selection is not a true statistically random sample and is not of sufficient size. The HCFA survey and certification process requires that two case-mix, stratified random samples of patients' clinical records be drawn by State surveyors, one for record review with a home visit and the other for record review without a home visit. The stratification is based on the patient's primary admitting diagnosis, and the case-mix is based on the disciplines of the HAA personnel providing services to patients in their homes. The sample sizes drawn by State surveyors are directly related to the size of the HHA, as defined by the number of admissions during the 12 months preceding the survey. This sampling methodology helps the surveyor draw valid conclusions about the HHA based on the sample of records reviewed.

Regarding this discrepancy, JCAHO proposes to adopt a sampling procedure for record reviews that is identical to the HCFA procedure. The JCAHO also proposes to use sample sizes for record reviews which are identical to HCFA's. We believe that these revisions, once adopted, will eliminate the discrepancy relating to the sample selection process and sample size.

The fourth area of discrepancy is the timeframe and process for following up on deficiencies found by surveyors during an HHA survey. The Medicare program has very specific procedures for ensuring that deficiencies identified during a survey of an HHA are corrected. As stated above, all deficiencies that are a violation of the Medicare statute and regulations are cited and sent to the HHA in writing on a Statement of Deficiencies and Plan of Correction Form (HCFA–2567) within 10 calendar days after the survey. The HHA is allowed 10 days to respond to the citation including an explanation of how and when it plans to correct the deficiencies. The HHA is also notified

that the HCFA-2567 (which contains the HHA's deficiencies and its proposed plan of correction) may be disclosed to the public, and that a future contact will be made to ensure that these plans of correction are fulfilled. A follow-up is made on all proposed plans of correction. In some instances, the follow-up is done by mail or telephone. In other instances, a revisit is made to the HHA to verify that the deficiencies have been corrected. The action taken by the State agency depends on the nature of the deficiency. An HHA cannot be initially approved or recertified unless an acceptable plan of correction is submitted by the HHA.

In the JCAHO process, its staff evaluates the results of the survey, the surveyors' recommendations, and other relevant information and, using scoring guidelines and decision rules, make a determination regarding accreditation. This determination can be for accreditation with commendation, accreditation with or without recommendations, conditional accreditation, or nonaccreditation. Certain recommendations affect the accreditation decision and should receive priority by the HHA in its plans for improvement (JCAHO calls these "type I recommendations)". JCAHO monitors progress in resolving type I recommendations through focused surveys or written progress reports, or both.

Before JCAHO staff make a recommendation for conditional accreditation or to terminate accreditation, the HHA is given an opportunity to review the survey findings and to submit documentation demonstrating that it was in compliance with the standards at the time of the survey. Alternatively, an HHA may request, within 20 calendar days of receiving the survey report, a validation survey which focuses on those areas that contributed to the recommendation of conditional accreditation or nonaccreditation.

If a conditional accreditation decision is made, the HHA is asked to submit, within 30 calendar days from receipt of the report, a plan of correction addressing the deficiencies outlined in the survey report. This plan must indicate what action will be taken to address the deficiencies and the timeframe for correction, which is not to exceed 6 months. If the plan is not acceptable to JCAHO, it makes a recommendation of nonaccreditation. If the plan is not accepted, a follow-up survey is then scheduled 6 months following JCAHO's approval of the plan of correction. After the follow-up survey, a recommendation regarding accreditation status is made.

The current turn-around time for the HHA to receive the written official accreditation report from JCAHO is approximately 45 days. JCAHO's decisionmaking process involves an analysis and validation of the surveyor's findings by staff in the departments of Accreditation Decision Processing and Home Care Accreditation Services.

Although there are differences between JCAHO's and HCFA's timeframes and procedures for following up deficiencies, JCAHO's process is comparable to the Medicare survey and certification process requirements regarding the follow-up of HHA deficiencies are met.

The fifth area of discrepancy is that JCAHO treats the following accreditation-related information as confidential:

- Information obtained from the home care organization before, during, and/or following the accreditation survey.
- All other materials that may contribute to the accreditation decision (for example, surveyor report forms).
- Standards compliance recommendations.
- Written staff analyses and Accreditation Committee minutes and agenda materials.

HCFA follows the rules of the Freedom of Information Act in making survey and certification information available to the public. When survey and certification information becomes part of HCFA's files, the information becomes available to the public; it may be read or copied. In accordance with the Privacy Act, personal identifiers (such as the names of beneficiaries, surveyors, and HHA employees) are deleted before disclosure. When releasing reports relating to survey and certification information, disclosure is made in a manner consistent with the requirements of section 1106 of the Social Security Act.

JCAHO's Executive Committee of the Board of Commissioners handles official, specific information requests from government agencies. Currently, JCAHO does not inform routinely HCFA and appropriate State agencies of its accreditation survey findings. In cases where a JCAHO HHA surveyor identifies any deficiency that poses a threat to public or patient safety, the JCAHO's President or a designee promptly recommends to the Accreditation Committee that the HHA be denied accreditation or have accreditation withdrawn, and provides written notification of this action to the authorities having jurisdiction. In cases where JCAHO surveyors identify any deficiency that poses an immediate threat to public or patient/client health or safety, the surveyors notify the HHA's chief executive officer and JCAHO central office staff. JCAHO's President is authorized to make a recommendation of nonaccreditation and to notify promptly the authorities having jurisdiction.

JCAHO has agreed to notify HCFA in the event that a Medicare-approved HHA receives a conditional accreditation decision. JCAHO accepts HCFA's requirement to submit accreditation findings and the official accreditation reports (to HCFA or to the appropriate State agency or to both) for those HHAs which request the use of JCAHO's accreditation for Medicare deeming purposes. Because JCAHO accepts HCFA's requirement to submit official accreditation reports, we find that the fifth area of discrepancy between JCAHO and HCFA requirements is eliminated.

Therefore, in light of the foregoing, we believe that we have reasonable assurance that JCAHO's revised survey and accreditation process provides reasonable assurance that JCAHO-accredited HHAs meets Medicare conditions of participation.

C. Proposed Stipulations Relating to JCAHO Accreditation

As stated above, in the proposed rule published in the **Federal Register** on December 14, 1990, we set forth the standards and procedures that we propose to use to remove approval from a national accrediting organization. As part of this proposed notice to approve JCAHO as a national accrediting organization for HHAs, we propose to apply to JCAHO the standards and procedures for removal of recognition that were set forth in the proposed rule that was published on December 14, 1990. We would remove recognition—

- If JCAHO should revise its standards in such a manner that they fail to provide reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation. Conversely, if we should revise the Medicare HHA conditions of participation to such a degree that the JCAHO standards or accreditation policies would no longer provide reasonable assurance that the JCAHO-accredited HHAs meet the conditions of participation; or
- If HCFA's validation or complaint surveys reveal widespread, systematic, or unresolvable problems with the JCAHO accreditation process, thereby providing evidence that there is not

reasonable assurance that JCAHO-accredited HHAs meet the Medicare conditions of participation.

The December 14, 1990, proposed rule also would establish certain conditions for the continued approval of an accreditation program; we would set forth these as part of this proposed notice. They include the following:

- Our reservation of the right to perform, as appropriate, announced and unannounced validation and complaint surveys to ensure that JCAHO-accredited HHAs that participate in Medicare meet the Medicare conditions of participation.
- JCAHO's continued agreement to release JCAHO survey reports to HCFA. If the reports reveal deficiencies which we believe warrant action by HCFA, we would reserve the right to survey the HHAs with deficiencies, to withdraw recognition of the accreditation program if appropriate, and to apply any other appropriate corrective measures or sanctions. The information to be released includes the accreditation findings, supporting documentation, the official accreditation survey reports of JCAHO surveyors, and other related information.

We also propose to make our recognition of JCAHO's accreditation program contingent on JCAHO's continued agreement to—

- Report (to either the Office of the Inspector General or the State agency responsible for investigating fraud and abuse for Medicaid or to both) complaints received from persons working in the accredited HHA or any substantial complaints from others, anonymous or identified, concerning potential fraud and abuse violations, and any other indication of a Medicare program abuse encountered by JCAHO during a JCAHO inspection. We believe that this requirement is necessary to ensure that the fraud and abuse reporting which presently occurs (as a result of the State survey of the HHA) continues to occur.
- Make JCAHO surveyors available to serve as witnesses if adverse action is taken by HCFA after JCAHO accreditation has been withdrawn. We believe this requirement is necessary to ensure HCFA's continued ability to call as a witness any surveyor who participates in a survey that results in the initiation of an adverse action. We believe that it is necessary for HCFA to continue to be able to have access to all surveyors who participate in such surveys should an HHA contest HCFA's initiation of an adverse action and request an evidentiary hearing before an administrative law judge. Such access is necessary to ensure that HCFA may present a witness who can describe the conditions he or she personally observed while surveying the HHA.

Finally, we propose to make our approval of JCAHO's accreditation program contingent on the following revisions to JCAHO's survey and accreditation process (JCAHO already has agreed to implement these changes):

- Implementation of an annual, unannounced survey of those HHAs requesting JCAHO accreditation for Medicare deeming purposes.
- Adoption of the standardized functional assessment instrument used by HCFA and State agency surveyors and training of the JCAHO surveyors in its use.
- Adoption of a case-mix, stratified random sampling process and sample sizes of clinical records for review and home visits comparable to HCFA's.
- Maintenance of a timeframe and process for following up deficiencies found during an HHA survey comparable to HCFA's.

D. Conclusion

In conclusion, we believe that the JCAHO accreditation standards and survey processes, subject to the stipulations described above, provide the Secretary with reasonable assurance that the Medicare conditions of participation have been met. Accordingly, subject to those stipulations, we propose to deem home health programs accredited by JCAHO to be in compliance with the Medicare conditions of participation for HHAs in accordance with the authority provided in section 1865 of the Act.

III. Executive Order 12291

Excutive Order 12291 (E.O. 12291) requires us to prepare and publish an impact analysis for any proposed notice that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with Foreign-based enterprises in domestic or export markets.

- In this notice, we propose to recognize the JCAHO accreditation process. This means that HHAs accredited by JCAHO ordinarily would not be subject to inspection by the Medicare State survey agencies to determine their compliance with Federal requirements. We believe that there would be no significant additional costs or savings realized as a result of this proposed notice.

IV. Information Collection Requirements

This proposed notice would not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed notice, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a final notice, we will respond to the comments in the preamble of that notice.

(Sec. 1865(a) of the Social Security Act (42 U.S.C. 1395bb(a) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance, and No. 93.714, Medical Assistance Program)

Dated: September 3, 1991.

Gail R. Wilensky

Administrator, Health Care Financing Administration.

Approved: October 7, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-2313 Filed 1-31-92; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Establishment of Behavioral and Neurosciences Special Emphasis Panel

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Director, National Institutes of Health (NIH), announces the establishment of the Behavioral and Neurosciences Special Emphasis Panel.

The Behavioral and Neurosciences Special Emphasis Panel will provide review of research applications and proposals relating to the behavioral and neurosciences.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: January 22, 1992.

Bernadine Healy, M.D.

Director, National Institutes of Health.

[FR Doc. 92-2401 Filed 1-31-92; 8:45 am]

BILLING CODE 4140-01-M

Establishment of Heart, Lung, and Blood Special Emphasis Panel

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6)), the Director, National Institutes of Health (NIH), announces the establishment of the Heart, Lung, and Blood Special Emphasis Panel.

The Heart, Lung, and Blood Special Emphasis Panel will provide review of research applications and proposals relating to the clinical sciences.

Duration of this committee is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: January 22, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92-2400 Filed 1-31-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 14, 1992. The meeting will be held at the Federal Building, Conference Room B1-19, 7550 Wisconsin Avenue, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 9 a.m. to adjournment to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, room 508, Bethesda, Maryland 20892, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 27, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-2398 Filed 1-31-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute, February 20-21, 1992, at the National Institutes of Health, Building 31, C Wing, Conference Room 8, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to 5 p.m. on Thursday, February 20 and on Friday, February 21 from 8:30 to adjournment. The Committee will discuss scientific program needs and develop recommendations for future research directions. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, room 6A16, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.838, Lung Diseases Research, National Institutes of Health.)

Dated: January 27, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-2399 Filed 1-31-92; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Indian Health Service; Medical Reimbursement Rates for Calendar Year 1992 Inpatient and Outpatient Medical Care

Notice is given that the Assistant Secretary for Health, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b)), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Calendar Year 1992: Emergency Non-Beneficiaries, Beneficiaries of other Federal agencies, Medicare, and Medicaid Beneficiaries.

Inpatient Services Per Day

Hospital—$433

(In Alaska—Hospital $507)

Outpatient—$85

(In Alaska—$142)

Ambulatory surgery shall be charged at the current Medicare rates as published in the **Federal Register** by the Health Care Financing Administration.

Dated: January 23, 1992.

James O. Mason,

Assistant Secretary for Health.

[FR Doc. 92-2483 Filed 1-31-92; 8:45 am]

BILLING CODE 4160-16-M

Secretary's Council on Health Promotion and Disease Prevention; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting of the Secretary's Council on Health Promotion and Disease Prevention, scheduled to meet Friday, February 28, 1992.

Name: Secretary's Council on Health Promotion and Disease Prevention.

Date and Time: February 28, 1992, 9 a.m. to 5 p.m., Lawton Chiles International House (Stone House), Fogerty International Center (Building 16), National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

Open, except for working lunch.

Purpose: The Secretary's Council on Health Promotion and Disease Prevention is charged to provide advice to the Secretary and to the Assistant Secretary for Health on national goals and strategies to achieve those goals for improving the health of the Nation through disease prevention and health promotion and to provide a link to the private sector regarding health promotion activities.

Agenda: This will be the ninth meeting of the Secretary's Council. The focus of this meeting is the Healthy People 2000 Action Series—a set of progress reports from PHS, the States, and the Healthy People 2000 Consortium.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Linda M. Harris, Ph.D., Staff Director for the Council, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, Washington, DC 20201, Telephone (202) 472-5370.

Agenda items are subject to change as priorities dictate.

J. Michael McGinnis,

Deputy Assistant Secretary for Health Director, Office of Disease Prevention and Health Promotion.

[FR Doc. 92-2412 Filed 1-3-92; 8:45 am]

BILLING CODE 4160-17-M

Indian Health Service; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HG (Indian Health Service) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Public Health Service (PHS), Chapter HG, Indian Health Service (IHS), 52 FR 47053-67, December 11, 1987, as most recently amended at 57 FR 1272, January 13, 1992, is amended to reflect the establishment of an Office of Contract Health Services for the Aberdeen Area Office to more accurately reflect current activities in the Area Office.

Under *Chapter HG, Section HG-20, Functions,* after the statement for *IHS Area Office (HGF), Information and Resources Management Programs,* amend the statement for the Aberdeen Area Office (HGFB) as follows:

(1) After the heading, *Office of Patient Care and Health Evaluation (HGFB7),* insert the statement:

Office of Contract Health Services (HGFB8). (1) Manages the contract health care and Medicare/Medicaid resources in accordance with program regulations; (2) collects and analyzes fiscal and logistical data as to impact on the overall health program; (3) provides interpretive reports to Area management; and (4) coordinates, advises and supports Area and Service Unit staff on the availability of financial resources in relation to their programs.

Dated: January 24, 1992.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 92-2482 Filed 1-31-92; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3197; FR-2914-N-03]

Announcement of Funding Awards Community Development Work Study Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: The purpose of this Notice is to notify the public of funding decisions made by the Department in a competition for funding under the Community Development Work Study Program (CDWSP). The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: James H. Turk, Technical Assistance Division, Office of Technical Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 708-3176. The TDD number is (202) 708-0564. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In a Notice published on March 6, 1991 (56 FR 9574), the public was informed of the availability of approximately $3 million to provide assistance to economically disadvantaged and minority students participating in work study programs. Section 107(c) of the Housing and Community Development Act of 1974, as amended, authorizes the CDWSP. Under this section, HUD is authorized to provide grants to institutions of higher education, either directly or through area-wide planning organizations or States, for the purpose of providing assistance to economically disadvantaged and minority students who participate in community development work study programs and are enrolled in full-time graduate or undergraduate programs in community or economic development, community planning, or community management. HUD awarded up to $3 million from the FY 1991 appropriations, and up to $3 million from the FY 1992 appropriations The list of awardees for FY 1991 was published on October 16, 1991 (56 FR 51912). This Notice announces the awardees for FY 1992.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101-235, approved December 15, 1989), the Department is publishing the CDWSP winners as follows:

COMMUNITY DEVELOPMENT WORK STUDY PROGRAM LIST OF WINNERS FOR FY 1992

[Grantees School Years 1992-1994]

	No. students funded	Amount funded
Region I:		
1. New Hampshire College	10	$293,200
Mr. Michael Swack, Community Economic Development Program, 2500 N. River Road, Manchester, NH 03104, Telephone: (603) 668-2211.		
Region III:		
2. Carnegie Mellon University	10	300,000
Dr. Harold Miller, School of Urban and Public Affairs, 5000 Forbes Avenue, Pittsburgh, PA 15213, Telephone: (412) 268-3841.		
3. University of Baltimore	10	252,120
Dr. Lawrence Downey, Department of Government and Public Administration, 1420 North Charles Street, Baltimore, MD 21201, Telephone: (301) 625-3172.		
4. Morgan State University	10	300,000
Dr. Elva Tillman, Institute for Urban Research, Soldiers' Armory, room 204, Baltimore, MD 21239, Telephone: (301) 319-3004.		
Region IV:		
5. Eastern Kentucky University	4	112,000
Dr. Terry Busson, Lancaster Avenue, Richmond, KY 40475, Telephone: (606) 622-1019.		
6. Clemson University	10	241,880
Dr. Herb Norman, College of Architecture, Lee Hall, Clemson, SC 29634, Telephone: (803) 656-3926.		
7. Triangle COG	19	522,350
Ms. Patricia White, Triangle Council of Governments, Research Triangle Park, Durham, NC 27709, Telephone: (919) 549-0551.		
University of North Carolina	6	.....
North Carolina State	6	.....

COMMUNITY DEVELOPMENT WORK STUDY PROGRAM LIST OF WINNERS FOR FY 1992—Continued

[Grantees School Years 1992-1994]

	No. students funded	Amount funded
North Carolina Central	7	
Region V:		
8. University of Wisconsin—Green Bay	5	103,600
Mr. Ray Hutchinson, Center for Public Affairs, 2420 Nicolet Drive, Green Bay, WI 54311, Telephone: (414) 465-2355.		
9. University of Illinois at Chicago	10	291,600
Dr. Charles Orlebeke, School of Urban Planning & Policy, 1007 W. Harrison, room 1180, Chicago, IL 60607, Telephone: (312) 996-2166.		
10. Mankato State University	8	230,948
Mr. Robert Barrett, Urban and Regional Studies Institute, Blue Earth County, Mankato, MN 56002, Telephone: (507) 389-1714.		
Region VI:		
11. North Central Texas COG	9	196,146
Mr. William J. Pitstick, Executive Director, P.O. Drawer COG, Arlington, TX 76005, Telephone: (817) 640-3300.		
University of North Texas	3	
University of Texas at Arlington	3	
University of Texas at Dallas	3	
Region VII:		
12. Iowa State University	6	156,156
Dr. Duane Shinn, Department of Community & Regional Planning, 126 College Design, Ames, IA 50011, Telephone: (515) 294-8959.		
	111	3,000,000

Dated: January 28, 1992.

S. Anna Kondratas,

Assistant Secretary for Community Planning and Development.

[FR Doc. 92-2541 Filed 1-31-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-00-4320-12]

Kingman Resource—Area Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Kingman Resource Area Grazing Advisory Board.

SUMMARY: The Kingman Resource Area Grazing Advisory Board will hold a meeting on Thursday, March 12, 1992. The meeting will start at 9 a.m. in the Phoenix District Office Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Report on Range Improvements for FY 92.
4. Range Policy Update.
5. Request for Advisory Board Expenditures.
6. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85927, at least seven (7) days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: January 23, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92-2405 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-00-4320-12]

Phoenix/Lower Gila Resource Areas Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Phoenix/Lower Gila Resource Areas Grazing Advisory Board.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory Board will hold a meeting on Tuesday, March 10, 1992. The meeting will start at 9 a.m. in the Phoenix District Office Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program.
2. Status of the Bureau's Planning and Environmental Impact Statements.
3. Report on Range Improvements for FY 92.
4. Range Policy Update.
5. Request for Advisory Board Expenditures.
6. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven (7) days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: January 24, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92-2406 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-32-M

[UT-080-02-4830-02]

Utah Vernal District Advisory Council; Meeting

AGENCY; Bureau of Land Management, Interior.

ACTION: Notice of Advisory Council Business Meeting.

SUMMARY: As authorized by the Federal Land Policy and Management, Act, Sec. 30. (A) and (B), the Utah Vernal District will hold an Advisory Council Business Meeting on Tuesday, March 17, 1992. The meeting will be held in the Vernal District Office Conference Room located at 170 South 500 East, Vernal, Utah. It will commence at 7 pm and is open to the public.

The purpose of the meeting is to receive the Council's individual or collective concerns or recommendations

concerning the Draft Diamond Mountain Resource Management Plan/ Environmental Impact Statement (DMRMP).

Members of the general public who may wish to comment on the DMRMP to Council members may do so by contacting the Vernal District Manager, David E. Little, at (801) 789–1362, no later than close of business March 16, 1992. Comment time may be restricted, based on the number of persons desiring to comment.

FOR FURTHER INFORMATION CONTACT: R. Ray Tate, Public Affairs Specialist, telephone (801) 789–1362.

Dated: January 22, 1992.

David E. Little,

Vernal District Manager.

[FR Doc. 92–2463 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–DQ–M

[Docket No. NV020–4320–02]

Winnemucca District Grazing Advisory Board Meeting

SUMMARY: Notice is hereby given in accordance with Public Law 94–579 and section 3, Executive Order 12548, February 14, 1986, that a meeting of the Winnemucca District Grazing Advisory Board will be held on March 5, 1992. The meeting will begin at 10 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada 89445.

The agenda for the meeting will include:

1. Public Statement
2. District Manager's Update
3. Update on Range Improvement Funds:
   - FY92 Projects
   - FY93 Projects
   - FY94 Projects

The meeting is open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445 by February 14, 1992. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: January 22, 1992.

Ron Wenker,

District Manager.

[FR Doc. 92–2246 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–HC–M

[MT–930–4212–12; MTM 33986]

Order Providing for Opening of Public Land in Phillips County; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order opens land reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. to the operation of the public land laws. No minerals were transferred in the exchange.

EFFECTIVE DATE: March 8, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

SUPPLEMENTARY INFORMATION:

1. In a land exchange the United States acquired the following surface estate:

Principal Meridian, Montana

T. 36 N., R. 31 E.,
sec. 32, E½

The area described contains 320.00 acres in Phillips County, Montana.

2. At 9 a.m. on March 8, 1992, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 8, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: January 23, 1992.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92–2461 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–DN–M

[CA–050–02–3110–10–B008, CACA 29388]

Realty Action; Classification Termination, Determination of Suitability and Exchange of Public and Private Lands in Butte, Shasta, and Tehama Counties, California

SUMMARY: Bureau of Land Management Order of Classification Recreation and Public Purposes S 078441, February 8, 1965, affecting M.D.M., T. 23N., R. 3E., Sec. 13, E2SESE is hereby terminated in its entirety and the land opened to operation under the public land laws and mining laws. Bureau of Land Management Order of Classification Public Sale CACA 27350 January 25, 1991 affecting M.D.M., T. 30N., R. 6W., Sec. 4, Lot 1, 2 (portion of NW), E2SE, N2NWSE, S2SWSE is hereby terminated in its entirety and the land opened to operation under the public land laws and mining laws. The lands in MD.M., T. 22N., R. 2E., Sec. 10, SENE were classified for exchange CACA 20077 on December 28, 1987, this parcel is no longer a part of exchange CACA 20077. The lands remain suitable for exchange and have been moved into exchange CACA 29388. All parcels in this exchange CACA 29388 were previously included in exchange classification CACA 27703 January 25, 1991 and are no longer needed for that exchange, the parcels have been moved into exchange CACA 29388.

The following described public lands and mineral estates are being exchanged under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). Not all of the lands identified below will be involved in the exchange. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the selected public land and the offered private land.

BUTTE COUNTY	
Selected Lands:	
M.D.M.	Acres
T. 22N., R. 2E., Sec. 10, SENE	40.0
T. 23N, R. 3E., Sec. 13, E2SESE	20.0
SHASTA COUNTY	
T. 30N., R. 1W.	
Sec. 2, Lot 10	40.0
Sec. 4, Lots 1, 2, 3, 4	60.6
R. 2E.,	
Sec. 18, Lot 1	40.70
T. 31N., R. 2W.,	
Sec. 8 NWNE	40.00
Sec. 22 E2NW	80.00
Sec. 22 SESW	40.00
R. 5W.,	
Sec. 14 Lots 4, 5, 6	1731
T. 32N., R. 5W.,	
Sec. 14 Lots 22, 26, E2NENESW	1034
Sec. 14 Lot 18	0.32
Sec. 14 Lots 8, 12, 13	8.36
Sec. 11 N2S2SWNESW, S2N2SWNESW	5.00
Sec. 20 Lots 1, 7, 11, 12, 16, 17, 18, 19, 20, 21, 22, 23, 24	105.56
Sec. 22 W2SESENE	5.00
T. 30N., R. 6W.,	
Sec. 4 Lot 1, 2 (of the NE), N2NWSE, S2SWSE, E2SE	280.03
T. 32N., R. 6W.,	
Sec. 24 Lot 86	3.89
Total	782.11±

In exchange for the above lands the United States will acquire the following described lands in Tehama County from

the Trust for Public Land, 118 New Montgomery Street, San Francisco, California 94105–3607.

Offered Private Land

Tehama County

APN #'s and Acres

009–450–19–1 62.90 M.D.M., T. 29N., R. 3W., Sec. 33, 34, portion of 009110–35–1 70.74, Sec. 33, portion of 009–110–36–1 75.81, Sec. 33, portion of 009–120–09–1 57.81, Sec. 34, portion of 009–120–15–1 15.94, Sec. 34, portion of 009–120–02–1 194.00 M.D.M., T. 29N., R. 3W., Sec. 27, portion of Total 481.83± Acres

DATES: This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands proposed for exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Information concerning this exchange is available from Howard Matzat at the Redding Resource Area Office, 355 Hemsted Dr., Redding, California 96002; (916) 246–5325. For a period of forty-five (45) days interested parties may submit comments to Mark Morse, Area Manager, at the above listed address. Comments on exchange parcels should identify the subject parcel.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal lands which have high public values for riparian habitat, and river access along the Sacramento River.

The value of lands to be exchanged will be approximately equal. Full equalization of values will be achieved by payment to the United States by The Trust for Public Land an amount not to exceed 25 percent of the total value of the lands to be transferred out of public ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).
2. Authorized pipelines, power lines, roads, highways, telephone lines, mineral leases, and any other authorized land uses will be identified as prior existing rights.
3. All necessary clearances for archaeology, rare plants and animals, and hazardous materials shall be obtained prior to conveyance of title.

Mark T. Morse,

Redding Resource Area Manager.

[FR Doc. 92–2249 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–40–M

[CA–050–02–4212–13, CACA 28345]

Notice of Realty Action; Classification Termination, Determination of Suitability and Exchange of Public and Private Lands in Shasta, and Trinity Counties, CA

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice.

SUMMARY: Bureau of Land Management Order of Classification Recreation and Public Purposes C3 35 dated February 17, 1969 affecting M.D.M., T. 31N., R. 5W., Sec. 16, NENE, NENWNE, S2NWNWNE, S2NWNW, S2NE, is hereby terminated in its entirety and the land opened to operation under the public land laws and mining laws. The following described public lands and mineral estates are being exchanged under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Shasta County

Selected Lands

M.D.M.

T. 31N., R. 5W., Sec. 16, NENE, NENWNE, S2NWNWNE, S2NWNE, S2NE, E2E2E2SE.

Totaling 175±acres.

Shasta County AP #203–200–04–11, 203–230–11–11, 303–240–10–11.

In exchange for the above lands the United States will acquire the following described lands in Trinity and Shasta Counties from Dan Tucker, Dave Frase and Ron Bishop, 5200 Churn Creek Road, Suite M, Redding, California 96002.

Offered Private Land

APN No.'s	Acres
Shasta County:	
64–010–02–11	70.5± M.D.M., T. 32N., R. 5W., Sec. 5, Lots 1, 2.
65–520–01–11	175.7± T. 33N., R. 5W., Sec. 21, SWNE, E2NESW, SESW, W2SE.
Trinity County:	
09–510–45	22.0± M.D.M., T. 34N., R. 11W., Sec. 27 & 34 (portion of)

DATES: This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands proposed for exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Information concerning this exchange is available from Howard Matzat at the Redding Resource Area Office, 355 Hemsted Dr., Redding, California 96002; (916 246–5325. For a period of forty-five (45) days interested parties may submit comments to Mark Morse, Area Manager, at the above listed address. Comments on exchange parcels should identify the subject parcel.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal lands which have high public values for riparian habitat and recreation along the Trinity River and Recreation lands near Keswick Lake.

The value of lands to be exchanged will be approximately equal. Full equalization of values will be achieved by payment to the United States by Dan Tucker, Dave Frase and Ron Bishop an amount not to exceed 25 percent of the total value of the lands to be transferred out of public ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. Authorized pipelines, power lines, roads, highways, telephone lines, mineral leases, and any other authorized land uses will be identified as prior existing rights.

3. All necessary clearance for archaeology, rare plants and animals, and hazardous materials shall be obtained prior to conveyance of title.

Mark T. Morse,

Redding Resource Area Manager.

[FR Doc. 92–2248 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–40–M

[NV-930-92-4212-24; N-38196]

Partial Termination of Segregative Effect and Clarification as to the Lands Remaining in Airport Lease Application N-38196, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect on certain lands requested in airport lease application N-38196 and provides clarification as to the lands remaining in the application.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520, (702) 785-6530.

EFFECTIVE DATE: February 3, 1992.

SUPPLEMENTARY INFORMATION: Airport lease application N-38196 was initially filed for the following described lands on June 14, 1983, and the lands became segregated from all forms of appropriation on that date:

Mount Diablo Meridian, Nevada

T. 18 S., R. 59 E.
Secs. 25, 26, 35 and 36 lying north and east of Highway 95 (right-of-way CC-018191).

Those lands have since been resurveyed and are now more properly described as:

Sec. 25, lots 1-8, N½;
Sec. 26, lots 1, 4, 5, 6, 7, 12, 13, NE¼, NE¼NW¼, NE¼SE¼;
Sec. 35, lot 1;
Sec. 36, lots 1, 2, 3, 6-11, 16, NE¼NW¼, E½SE¼.

An amended application was filed on January 7, 1984. It did not include any of the above described lands. Therefore, pursuant to 43 CFR 2091.3-2(a)(2), the segregative effect as it pertains to the above described lands will terminate on (date of publication), and at 10:00 a.m. on that date the lands will become open to the operation of the public land laws and the mining laws.

A notice relative to the amended application was published in the **Federal Register** (49 FR 22138) on May 25, 1984. A recent review of the case record disclosed some discrepancies between the lands described in the amended application and the legal description contained in the May 25, 1984, **Federal Register** notice. Therefore, in order to clarify the record, the proper legal description of the lands that were requested in the amended application is provided below:

Mount Diablo Meridian, Nevada

T. 18 S., R. 60 E.,
Sec. 30, those lands in lots 3 and 4, and the SE¼SW¼ lying south and west of powerline right-of-way Nev-055903;
Sec. 31, lots 1, 2, 3, 4, E½SW¼, and those lands in the W½NE¼, SW¼SE¼NE¼, E½NW¼ and the SE¼ lying south and west of powerline right-of-way Nev-055903;
Sec. 32, those lands in the SW¼SW¼ lying south and west of powerline right-of-way Nev-055903.
T. 19 S., R. 60 E.,
Sec. 5, lots 3, 4, S½NW¼ (Resurveyed and now more properly described as lots 5, 6, 7 and 8);
Sec. 6, lots 1-5, 8-11, S½NE¼, SE¼NW¼, W½E½NW¼SW¼, NE¼SW¼, E½SE¼SW¼, SE¼ (Resurveyed and now more properly as lots 1-5, 12-15, 17, 18, S½NE¼, SE¼NW¼ and SE¼);
Sec. 7, that portion of the NE¼ lying north and east of Highway 95 (right-of-way CC-018138) (Resurveyed and now more properly described as lots 5, 6, 8, 14, 15 and 16).

The lands described above became segregated from all forms of appropriation under the public land laws and the mining laws on January 7, 1984, the date on which the amended application was filed.

Effective December 5, 1984, the amended application was rejected in part as to the following described lands:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 5, NW¼NW¼ of lot 4, NE¼SW¼NW¼ and SW¼SW¼NW¼ (Resurveyed and now more properly described as the NW¼NW¼ of lot 6, and the NE¼ and SW¼ of lot 7).

Pursuant to 43 CFR 2091.2-2(a)(2), the segregative effect as it pertains to the above described lands will terminate on February 3, 1992, and at 10 a.m. on that date the lands will become open to the operation of the public land laws and the mining laws.

On February 8, 1991, the applicant of record, Olympic Nevada, Inc., withdrew the following described lands from the airport lease application in favor of an exchange transaction:

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
Sec. 6 and 7, those lands south and west of Highway 95 (right-of-way CC-018138).

A notice of the partial withdrawal appeared in the **Federal Register** (56 FR 14120) on April 5, 1991, and at 10 a.m. on that date the lands became open to disposal by exchange.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-2407 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-HC-M

[MT060-02-4333-11]

Wild and Scenic River Outfitters

AGENCY: Bureau of Land Management, Interior.

ACTION: Open Season for Commercial Permit Applications on the Upper Missouri National Wild and Scenic River.

SUMMARY: This notice establishes an "open season" for applying for Special Recreation Use Permits on the Upper Missouri National Wild and Scenic River in Montana required of all commercial float boating operations. Other requirements of commercial outfitting and guiding operations remain as outlined in the **Federal Register**, 44 FR 18743, March 29, 1979, entitled "Establishment of Recreation Use Permit System for the Upper Missouri National Wild and Scenic River."

ADDRESS AND DATES: Applications must be sent to the Lewistown District, Bureau of Land Management, Airport Road, Lewistown, Montana 59457 between January 1 and April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Chuck Otto, Judith Resource Area Manager, Airport Road, Lewistown, Montana 59457.

Dated: January 21, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-2247 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-DN-M

Resource Management Plan Amendment, Marcopa County, AZ

AGENCY: Bureau of Land Management—Interior.

ACTION: Notice of intent to prepare a Category I Amendment to the Lower Gila South Resource Management Plan.

SUPPLEMENTARY INFORMATION: In accordance with CFR 1610.2(c), and 1610.3-1(d), notice is hereby given of intent to prepare a planning amendment document. This notice also constitutes the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1507.7).

(1) Description of the proposed planning action: The proposed action is to amend the Lower Gila South Resource Management Plan (RMP) completed in June 1988. The Category I planning amendment will be based upon existing statutory requirements and policies and will carry out the requirements of the Federal Land Policy and Management Act of 1976 (FLPMA). The RMP amendment and Environmental Assessment (EA) to be prepared will provide the basis for modifying the Land Tenure section of

the Resource Management Plan to provide an exchange opportunity.

(2) Identification of the geographic area involved: The planning area involved within the Lower Gila South RMP is located within a portion of southwestern Maricopa County, Arizona.

(3) General types of issues anticipated: The proposed amendment addresses a change in the Land Tenure section of the Resource Management Plan.

(4) Disciplines to be represented and used to prepare the RMP amendment and Environmental Assessment will be the following: Lands, wildlife, botany, soils, archaeology, geology, range and hydrology.

(5) The kind and extent of public participation opportunities to be provided: Public participation will be carried out through participation in several comment periods to be announced in the **Federal Register** and local newspapers. There is a specific comment period for the governor to inform and seek comments from State and local agencies.

(6) Times, dates, and locations scheduled or anticipated for public meetings, hearings, conferences or gatherings, will be published in a local newspaper. All public input will be handled through written comments.

(7) The name, title, address and telephone number of the Bureau of Land Management official who may be contacted for further information: John Christensen, Area Manager, 2015 W. Deer Valley Rd., Phoenix, Arizona 85027, Phone: (602) 863–4464.

(8) The location and availability of documents relevant to the planning process: Documents will be available for public review at the Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona.

Dated: January 23, 1992.

Henri R. Bisson,

District Manager.

[FR Doc. 92–2408 Filed 1–31–92, 8:45 am]

BILLING CODE 4310–32–M

[G–010–4331–10/G2–0105]

Notice of Intent To Prepare a Resource Management Plan Amendment/Environmental Assessment (RMPA/EA); New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an Amendment to the Taos Resource Management Plan to analyze designating an Area of Critical Environmental Concern for La Cienega Mesa. The plan amendment will be called the "La Cienega Amendment to the Taos RMP".

SUMMARY: The Taos Resource Area (TRA), Bureau of Land Management (BLM) proposes an amendment to the Taos Resource Management Plan (RMP) which was completed in 1988. The amendment would expand the present La Cienega Mesa Special Management Area (SMA), which contains 1,493 acres to approximately 5063 acres and designate it as an Area of Critical Environmental Concern (ACEC). The proposed ACEC contains 3,556 acres of public lands administered by the BLM and 1,507 acres of private lands. The private lands will not be the subject of ACEC management prescriptions. This proposal is based on recent inventory and research which demonstrates that the archaeological resources in the area are more extensive and significant than what was known at the time the SMA was designated in the Taos RMP. The area contains nationally significant cultural resources.

The proposed ACEC is located 8 miles southwest of Santa Fe, New Mexico on public lands within the following sections of land:

New Mexico Principle Meridian

T. 15 N., R. 7 E.,
Secs. 1, 2, 3, 10, and 11.
T. 15 N., R. 8 E.,
Sec. 6.
T. 16 N., R. 7 E.,
Secs. 25, and 36.
T. 16 N., R. 8 E.,
Secs. 7, 8, 17, 18, 19, 20, 30, and 31.

ACEC's generally contain higher resource values; are more sensitive to disturbance; and require special management attention to protect and prevent irreparable damage. The RMP recognized that as new resource data is obtained, the boundaries and management prescriptions of the SMA's may be modified, and new SMA's and/or ACEC's could be identified and designated in the future. This is the case for the La Cienega Mesa SMA.

The issue to be addressed in the Amendment/EA is: should the La Cienega Mesa SMA be enlarged and designated an ACEC. The Management Prescriptions listed in the Taos RMP will be expanded for increased protection and management of the area. The BLM will attempt to acquire private lands within the ACEC boundary upon which significant cultural or riparian resources are located. These land acquisitions will only be pursued with willing sellers. The cultural resource values within the proposed ACEC now meet both the ACEC relevance and importance criteria. The resources meet the ACEC "importance" criteria because they are nationally and locally significant; and they are fragile, irreplaceable, and vulnerable to vandalism, erosion, and other impacts. The area meets the ACEC "relevance" criteria because it contains significant historic, cultural, and scenic values.

The Taos RMP has been reviewed and SMA status of La Cienega has been found to be inadequate to provide the higher level of protection, preservation, and management afforded by ACEC designation. Therefore, a Plan Amendment/EA to the Taos RMP is required. A team of interdisciplinary specialists with backgrounds in Archaeology, Wildlife Biology, Range Management, and Outdoor Recreation Planning will be involved in the preparation of the Plan Amendment/EA.

DATES: Interested parties may submit comments regarding this plan amendment through March 10, 1992.

ADDRESSES: Comments should be sent to Area Manager, Bureau of land Management, Taos Resource Area Office, 224 Cruz Alta Street, Taos, New Mexico 87571.

FOR FURTHER INFORMATION CONTACT: Paul R. Williams, BLM, Taos Resource Area Office, 224 Cruz Alta Street, Taos, New Mexico 87571, (505) 758–8851 or FTS 479–8801.

SUPPLEMENTARY INFORMATION: After the comment period on this Notice of Intent, the BLM will prepare a RMP Amendment/EA. Following the preparation of the RMP amendment/EA and a Record of Decision will be prepared. A Notice of Availability will announce the availability of the Plan Amendment/EA and Record of Decision in a subsequent **Federal Register.**

Dated: January 27, 1992.

Larry L. Woodard,

State Director.

[FR Doc. 92–2336 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–FB–M

[ID–943–4214–11; IDI–15785]

Proposed Continuation of Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes that a 738.40 acre withdrawal for Powersite Classification No. 461 continue for an additional 20 years. The land is still needed for waterpower purposes. These lands will remain closed to surface entry, but have

been and will remain open to mineral leasing and mining.

DATES: Comments should be received by May 4, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Lievsay, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3166.

The Bureau of Land Management proposes that the existing land withdrawal made by U.S.G.S. Order dated August 28, 1971, for Powersite Classification No. 461 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, insofar as it affects the following described land:

Boise Meridian

T. 3 N., R. 41 E.,
Sec. 8, lots 9, 13 and 14;
Sec. 9, lots 5 to 7, inclusive;
Sec. 10, lot 3;
Sec. 11, lots 6 and 7;
Sec. 14, lots 6 to 11, inclusive;
Sec. 15, lots 9 to 19, inclusive;
Sec. 16, lots 7, 10, 12 to 17, inclusive.
T. 3 N., R. 42 E.,
Sec. 4, lots 9 and 10;
Sec. 5, lots 15 to 20, inclusive, 22, 23 and 24;
Sec. 7, lots 12 to 18, inclusive;
Sec. 8, lots 4 to 7, inclusive;
Sec. 9, lots 11 to 13, inclusive;
Sec. 10, lots 9 to 14, inclusive;
Sec. 11, lots 5 to 11, inclusive;
Sec. 12, lots 3 to 6, inclusive;
Sec. 13, lots 10 to 17, inclusive;
Sec. 14, lots 6 to 9, inclusive;
Sec. 15, lots 3;
Sec. 24, lots 5 to 8, inclusive.
T. 3 N., R. 43 E.,
Sec. 19, lots 9 to 13, inclusive;
Sec. 30, lots 13 to 15, inclusive;
Sec. 31, lots 10 and 11;
Sec. 32, lot 8.

The area described aggregates 738.40 acres in Bonneville County.

The withdrawal is essential for protection of waterpower potential development. The existing withdrawal closed the described land to surface entry, but not to mineral leasing and mining. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the above address.

The authorized officer of the Bureau of Land Management will undertake such investigations as necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued; and if so, for how long. The final determination of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: January 21, 1992.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 92–2306 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–CG–M

[MT–930–4214–10; MTM 30912]

Cancellation of Withdrawal Application; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: By memorandum dated January 13, 1992, the U.S. Department of the Interior, Fish and Wildlife Service (FWS), canceled application MTM 30912 to withdraw lands for protection of the Charles M. Russell National Wildlife Refuge. The temporary segregative effect expired October 20, 1991.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

SUPPLEMENTARY INFORMATION: Notice of the October 20, 1991, termination of the temporary segregative effect was published in the **Federal Register**, 56 FR 44099, September 6, 1991. Application MTM 30912 has been replaced by FWS mineral withdrawal application MTM 80092, published in the **Federal Register**, 56 FR 52281–3, October 18, 1991.

Dated: January 23, 1992.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92–2462 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–DN–M.

[NV–943–92–4214–10; N–53691]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

January 21, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service proposes to withdraw 2,581.64 acres of public land for an addition to the Ash Meadows National Wildlife Refuge, Nye County, Nevada. This notice closes the land for up to two years from settlement, sale, location, and entry under the general land laws, including the U.S. mining laws. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by May 4, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Mary Clark, BLM Nevada State Office, (702) 785–6530.

SUPPLEMENTARY INFORMATION: On January 16, 1992, a petition was approved allowing the U.S Fish and Wildlife Service to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian, Nevada

T. 17 S., R. 50 E.,
Sec. 34, NE¼;
Sec. 35, W½NE¼, N½NW¼, SW¼NW¼, W½SW¼, E½SE¼, NW¼SE¼.
T. 18 S., R. 50 E.,
Sec. 1, lots 3, 4;
Sec. 2, lots 1, 2, S½NE¼, SE¼;
Sec. 12, W½NE¼, NW¼;
Sec. 23, S½N½, S½;
Sec. 24, E½NE¼, NW¼NE¼, W½SW¼.
T. 18 S., R. 51 E.,
Sec. 7, NE¼, E½NW¼;
Sec. 18, lots 2, 3, 4, SW¼NE¼, SE¼NW¼, E½SW¼;
Sec. 19, lots 1, 2, SW¼NE¼, E½NW¼.

The area described contains 2,581.64 acres in Nye County.

The purpose of the proposed withdrawal is to reserve the land for an addition to the Ash Meadows National Wildlife Refuge.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at

least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Uses of a temporary nature, that are compatible with the purposes for which the refuge is established, may be allowed during the segregative period, but only with the approval of an authorized official of the Bureau of Land Management. Controlled public uses for educational, recreational, or scientific purposes are examples.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the U.S. Fish and Wildlife Service.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 92-2409 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Great Lakes Nonindigenous Aquatic Species Panel Meeting

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

TIME AND DATE: The Great Lakes Panel on Nonindigenous Species will meet from 8:30 a.m. to 4 p.m. on Tuesday, February 18, 1992.

PLACE: The meeting will be held in the Piers 7 and 8 Room, Westin Harbour Castle Hotel, 1 Harbour Square, Toronto, Ontario, Canada.

STATUS: The meeting is open to the public. Interested persons may make oral statements to the Panel or may file written statements for consideration.

MATTERS TO BE CONSIDERED: A number of subjects will be discussed, including a review of the Task Force charter; an update of Task Force and U.S. Coast Guard efforts to implement the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; selection of a chair and vice-chair; review of proposed policy recommendations concerning management, research, legislative, and budget needs and the research protocol; presentations on industry and local government perspectives on nonindigenous species activities; and other nonindigenous species issues and activities.

CONTACT PERSONS FOR MORE INFORMATION: Martha Reesman, Great Lakes Commission, the Argus Building, 400 Fourth Street, Ann Arbor, Michigan, at (313) 665-9135.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Great Lakes Panel on Nonindigenous Aquatic Species (Panel), a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101-646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). This will be the first meeting of the Great Lakes Panel since the Federal Advisory Committee Act charter for the Task Force was approved by the Secretary of the Interior on November 26, 1991. Ontario's Ministry of Natural Resources is cosponsoring the meeting. Summary minutes of meeting will be maintained by Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Great Lakes Panel Coordinator, Great Lakes Commission, The Argus Building, 400 Fourth Street, Ann Arbor, Michigan, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting. Copies may be purchased for the cost of duplication.

Dated: January 29, 1992.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 92-2528 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service (MMS)

Outer Continental Shelf (OCS)

Advisory Board Scientific Committee (SC); Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

The OCS Advisory Board SC will meet Wednesday, March 18, and Thursday, March 19, 1992, at the Fairmont Hotel, University Place, 123 Baronne Street, New Orleans, Louisiana 70140, telephone (504) 529-7111.

Sessions will run from 8 a.m. to 5 p.m. The SC is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific value of the MMS' OCS Environmental Studies Program.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary sessions.

A copy of the agenda may be requested from the MMS by writing Ms. Phyllis Treichel at the address below.

Other inquiries concerning the SC meeting should be addressed to Dr. Ken Turgeon, Chief, Environmental Studies Branch, Environmental Policy and Programs Division, Minerals Management Service, 381 Elden Street, Mail Stop 4310, Herndon, Virginia 22070. He may be reached by telephone at (703) 787-1717.

Dated: January 24, 1992.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 92-2410 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Statue of Liberty National Monument Ellis Island, New York, NY; Intent to Extend Comment Period

Notice is hereby given that the National Park Service (NPS) will extend the period for written public comment on the use and treatment of the remaining deteriorating buildings on Ellis Island, Statue of Liberty National Monument, until Thursday, February 6, 1992. Submission of written comments should be made to the Chief of Urban Projects, 26 Wall Street, New York, NY 10005.

Views of the public regarding the impact on the historic characteristics of Ellis Island are being sought in order to fulfill NPS responsibilities under section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations (36 CFR Part 800).

This notice of intent to extend the comment period follows a public meeting at Ellis Island on December 17, 1991 at which time the NPS presented to the public a proposal for the use and treatment of the remaining deteriorating buildings as an international conference center with overnight facilities and a commercial facility serving park visitors and conferees. The proposal will result in the rehabilitation of 626,700 square feet in 20 buildings (2 of which with 245,000 square feet have already been rehabilitated) and the demolition of 69,800 square feet in 12 buildings.

Dated: January 24, 1992.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 92-2421 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-70-M

Kalaupapa National Historical Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Kalaupapa National Historical Park Advisory Commission will be held at 10 a.m. on Monday, February 24, 1992 at the McVeigh Community Hall, Kalaupapa, Molkai, Hawaii.

The Advisory Commission was established by Public Law 95-565 to provide advice with respect to park development, operations, public visitation, and employee training.

Members of the Commission are as follows:

Rev. David K. Kaupu, Chairman
Mr. Robert L. Barrel
Mrs. Kuulei Bell
Mr. Shoichi Hamai
Mr. Paul Harada
Mr. Issac K. Keao
Mr. Gloria F. Marks
Mr. Ralston Nagata
Mr. Henry K. Nalaielua
Mr. Bernard Punikaia

This meeting will be devoted to review of the park's programs.

The meetings are open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Mr. Peter Thompson, Superintendent, Kalaupapa National Historical Park, Kalaupapa, Hawaii 96742; telephone (808) 567-6102.

Minutes of the meeting will be available for public inspection by June 1, 1992, in the Office of the Pacific Area Director, National Park Service, 300 Ala Moana Boulevard, room 6305, Honolulu, Hawaii.

Dated: January 23, 1992.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 92-2422 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-70-M

National Archeological Survey Initiative; Availability of the Draft Systemwide Archeological Inventory Program Document

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of the National Park Service's draft Systemwide Archeological Inventory Program document.

SUMMARY: This notice announces the availability of the National Park Service's draft Systemwide Archeological Inventory Program document. This program is being developed during fiscal year 1992 under the National Archeological Survey Initiative. The goal of the program is to systematically locate, evaluate and document the majority of scientifically valuable archeological resources on National Park System lands over a projected period of 20 years.

DATES: The draft Systemwide Archeological Inventory Program document is available for public review and comment. Written comments should be submitted by February 28, 1992.

ADDRESSES: Copies of the draft document may be obtained by contacting Michele C. Aubry, Senior Archeologist, Anthropology Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; telephone FTS/Commercial 202-343-1879. Comments on the draft document should be sent to the Chief, Anthropology Division, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 or by FAX FTS/Commercial 202-343-5260.

FOR FURTHER INFORMATION CONTACT: Michele C. Aubry at FTS/Commercial 202-343-1879.

SUPPLEMENTARY INFORMATION: The National Park System consists of 358 nationally significant cultural, natural and recreational areas covering about 80 million acres of land in 49 States, American Samoa, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. At the close of fiscal year 1990, about 53,000 prehistoric and historic archeological sites were known to be present on National Park System lands. An additional 364,000 to 389,000 sites are projected to exist in park areas.

The National Park Service's (NPS) archeological mission is to conserve, protect and manage archeological resources under its stewardship for long-term research and for appropriate public enjoyment. However, lack of information about the location, characteristics and significance of archeological resources on park lands seriously impairs the NPS's ability to meet its archeological mission and to effectively carry out its park planning, park operations, resources management, interpretation, and law enforcement responsibilities. Development and implementation of a systemwide archeological inventory program will enable the NPS to more effectively carry out these responsibilities. In addition, it will provide the framework to fulfill the archeological inventory and survey requirements contained in Executive Order 11593, in the National Historic Preservation Act (as amended), and in the Archaeological Resources Protection Act (as amended).

The draft Systemwide Archeological Inventory Program document sets forth the NPS's initial ideas on how a long-term, systemwide archeological inventory program might be crafted. Copies have been sent for concurrent review to NPS offices, the State Historic Preservation Officers, the National Conference of State Historic Preservation Officers, the Advisory Council on Historic Preservation, the Historic Preservation Officers and other officials of Federal land management agencies and Indian tribes with large landholdings near National Park areas, the Federal Preservation Forum, national Native American organizations, and national professional archeological societies. Other interested parties are invited to review the draft document and submit comments and suggestions for improvement.

Dated: January 28, 1992.

Jerry L. Rogers,

Associate Director, Cultural Resources, National Park Service.

[FR Doc. 92-2505 Filed 1-31-92; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 60-92]

Privacy Act of 1974; New System of Records

Pursuant to the Privacy Act (5 U.S.C. 552a), the Department of Justice, United States Marshals Service (USMS), proposes to establish a new Privacy Act system of records entitled "U.S. Marshals Service Prisoner Processing and Population Management System, JUSTICE/USM-005."

The USMS indicates that it previously included these records in a more generally described system of records entitled "U.S. Marshals Service Prisoner Transportation System, Justice/USM-003," but now proposes to more specifically characterize them in a new system. The new system describes a variety of identifying records on each prisoner which may be generated during the day-to-day processing, safekeeping, and disposition of prisoners in USMS custody while criminal proceedings are pending. A proposed rule to exempt the system from subsections (c)(3) and (4),

(d), (e)(1), (2), (3), (e)(5) and (e)(8), and (g) of the Privacy Act can be found in the Proposed Rules Section of today's Federal Register.

Title 5 of the U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the routine uses of the proposed system of records. The Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires a 60-day period in which to conclude its review of the system.

Therefore, please submit any comments by March 4, 1992. The public, OMB, and the Congress are invited to submit written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1103, CAB Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: January 2, 1992.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/USM-005

SYSTEM NAME:

U.S. marshals Service Prisoner Processing and Population Management System.

SYSTEM LOCATION:

Each district office of the U.S. Marshals Service (USMS) maintains files on prisoners taken into U.S. Marshal custody for the respective district. See Appendix of Addresses published as JUSTICE/USM-999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prisoners taken into U.S. Marshal custody.

CATEGORIES OF RECORDS IN THE SYSTEM:

Any and all information necessary to complete administrative processes, safekeeping, health care, and disposition of individual Federal prisoners who are in custody pending criminal proceedings, together with any law enforcement related records generated during such custody. Records include a compilation of basic information on each prisoner taken into custody of the U.S. Marshal, covering identifying data, the reason for U.S. Marshal custody (e.g., Federal indictment, complaint, or writ), the court disposition of charges, dates of custody, and institutions to which committed or housed. Also included are Form USM-129, Prisoner Custody, Detention and Disposition Record (formerly DJ-100); prisoner photograph; personal history statement; fingerprint card; identification record; detainer notice; speedy trial notice; prisoner remand or order to deliver prisoner, and receipt for U.S. prisoner; property receipt; court records including writs, bail/bond release information, judgment and commitment and other court orders; medical records; prisoner custody alert notice; prisoner complaints or serious incident reports (and related investigatory information) filed by either the prisoner or by officials or by other individuals at the institution where the prisoner is housed and covering a wide range of potentially serious issues, e.g., medical treatment of prisoners, and attempted escapes or alleged prisoner misconduct or criminal activity; designation requests to the Bureau of Prisons (BOP) and BOP responses; information identifiable to informants, protected witnesses, and confidential sources; access codes and data entry codes ad message routing symbols used to communicate with law enforcement officials regarding the custody and safekeeping of prisoners; and prisoner transportation requests to the Prisoner Transportation Division (and any related records) which may include sensitive security data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 3149, 3193, 3604, 3621, 4002, 4006, 4086, 4282, 4285; 28 U.S.C. 509, 510, 568, 569; 5 U.S.C. 301; 44 U.S.C. 3101; and 28 CFR 0.111.

PURPOSE:

The Prisoner Processing and Population Management System is maintained to cover law enforcement and security related records which are generated in the local USMS district offices in connection with the processing, safekeeping, and disposition of Federal prisoners who are in custody pending criminal proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Relevant records or information may be disclosed under subsection (b)(3) of the Privacy Act as follows:

1. To other Federal, State, local or foreign law enforcement agencies, contract detention or medical facilities (1) who provide temporary custody or housing or care of prisoners, or who otherwise require information (a) to protect the safety and/or health of the prisoners, the public, and of law enforcement officials or (b) to otherwise ensure fair and proper treatment of prisoners during custody and transfer of custody or (2) who may also assist the USMS in pursuing any necessary inquiry/investigation of complaints, alleged misconduct or criminal activity. For example, relevant records or information may be disclosed to secure their safe and efficient transfer to other jurisdictions, to court appearances, or to the designated institution for service of sentence; to ensure that appropriate credit for time in custody is given; that appropriate medical treatment is provided; that all rights of the prisoner, whether statutory, humanitarian, or otherwise, are provided and protected; and to elicit information from which to initiate an inquiry/investigation and/or respond to prisoner complaints and reports of alleged misconduct or criminal activity; or, conversely, to enable those entities to respond to, or provide information relating to, such prisoner complaints or reports of misconduct or criminal activity.

2. To the appropriate Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, defending, or implementing a statute, rule, regulation, or order to the extent that the information is relevant to the recipient's law enforcement function.

3. to the appropriate Federal, State, local, or foreign law enforcement agency where there is an indication of an actual or potential violation of civil or criminal laws, statutes, rules, or regulations within the jurisdiction of the recipient agency.

4. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

5. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

6. To the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in standard file cabinets. Duplicate copies of paper records are stored on magnetic discs.

RETRIEVABILITY:

Information is retrieved by name of prisoner and/or prisoner number.

SAFEGUARDS:

Paper records are stored in locked files. Access to computerized data is restricted through user identification and discrete password functions. In addition, USMS office suites are secured behind locked doors around the clock and access is restricted to USMS personnel with official identification.

RETENTION AND DISPOSAL:

Records are kept in active files until a prisoner has been transferred out of the district's custody or until his/her judicial proceedings have been completed. Records are then transferred to inactive files. The USMS is reviewing a proposed disposition schedule for these records. Upon approval by the USMS Records Management Officer and NARA, this section of the notice will be revised to identify the approved schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Operations Support, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

NOTIFICATION PROCEDURE:

Same as System Manager.

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." It should clearly indicate name of requester, the nature of the record sought and approximate dates covered by the record. The requester shall also provide the required verification of identity (28 CFR 16.41(d)) and provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above, Attention: FOI/PA Officer.

CONTESTING RECORD PROCEDURES:

Individuals desiring the contest or amend information maintained in the system should direct their request to the System Manager listed above, Attention: FOI/PA Officer, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information is received from the prisoner, the courts, Federal, State, local and foreign law enforcement agencies, and medical care professionals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c) (3) and (4), (d), (e) (1), (2), (3), (e)(5) and (e)(8) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 92-2476 Filed 1-31-92; 8:45 am]
BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Cable Television Laboratories, Inc./Tele-Communications, Inc./Viacom International Inc./Public Broadcasting Service

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs"), Tele-Communications, Inc. ("TCI"), Viacom International Inc. ("Viacom") and Public Broadcasting Service ("PBS") on November 27, 1991 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to this agreement and (2) the nature and objectives of this agreement. The notification was filed for the purpose of invoking the protections of Section 4 of the Act, which limit the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to this agreement and the general areas of planned activity are given below.

The current parties are the following:

Cable Television Laboratories, Inc., 1050 Walnut Street, Suite 500, Boulder, Colorado 80302.

Tele-Communications, Inc., 4643 South Ulster Street, Suite 400, Denver, Colorado 80237.

Viacom International Inc., 1515 Broadway, New York, NY 10036.

Public Broadcasting Service, 1320 Braddock Place, Alexandria, Virginia 22314.

The area of planned activity is the participation and coordination with each other in a Request For Proposals ("RFP") for development of one or more Digital Compression Delivery System(s) that will enable cable television program suppliers to provide multiple programs per satellite transponder channel to cable television system headends and customers. The parties intend to evaluate the responses to the RFP and may independently award contract(s) to develop the System(s).

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-2468 Filed 1-31-92; 8:45 am]
BILLING CODE 4410-01-M

Notice Pursuant To the National Cooperative Research Act of 1984—CAD/CAM Research and Development Partnership

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The Joint Venture Research Program ("JVRP") on November 12, 1991, filed a written notification on behalf of CAD/CAM Research and Development Partnership ("CAD/CAM") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the partnership and its general areas of planned activity are given below.

Chrysler Corporation, located in Highland Park, Michigan.

Ford Motor Company, located in Dearborn, Michigan.

General Motors Corporation, located in Detroit, Michigan.

The Joint Venture Research Program of the Motor Vehicle Manufacturers Association is not a partner to the Partnership, but has provided administrative assistance and may continue to do so.

The Partners intend to identify opportunities for joining some aspects of their research and development efforts pertaining to CAD/CAM technology in order to avoid duplication of effort and expense and to help maintain the technological competitiveness of the United States automotive industry in world markets. Upon successful identification of such technological opportunities, the Partnership proposes to consider and may address the following objectives:

Scientific investigation into the practical application of computer aided design and manufacturing technologies for the automotive industry, including development of theoretical and experimental computer-based data models and data prototypes;

The development of uniform specifications (i.e., computer language) for manipulating data relevant to automotive engineering and design;

The collection, exchange and analysis of research information;

The development of testing and basic engineering techniques for use in proof of theories and concepts; and

The interaction with domestic and international organizations that influence the shape of emerging CAD/CAM technology, to encourage CAD/CAM research of potential utility to the automotive industry.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-2467 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984, Great Lakes Composite Consortium, Inc.

Notice is hereby given that, on December 11, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Great Lakes Composite Consortium, Inc. ("GLCC") filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the identities of additional parties that have become members of GLCC. The additional written notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the GLCC advised that A.O. Smith Corporation, Milwaukee, WI; Basic Industry Research Laboratory, Evanston, IL; Charles Stark Draper Laboratory, Inc., Cambridge, MA; Cincinnati Milacron, Cincinnati, OH; Crucible Composites Company, East Troy, WI; Dexter Hysol Aerospace, Inc., Pittsburgh, CA; Georgia Institute of Technology, Atlanta, GA; Hexcel, Doublin, CA; Michigan Molecular Institute, Midland, MI; Newport News Shipbuilding, Newport News, VA; Northrop Corporation, Los Angeles, CA; Packer Engineering, Inc., Naperville, IL; Penn State University, University Park, PA; Peterson Builders, Inc., Sturgeon Bay, WI; Rockwell International Corporation, Los Angeles, CA; and Stevens Institute of Technology, Hoboken, NJ have become members of GLCC. In addition, GLCC advised that Gateway Technical College, Kenosha, WI; Marquette University, Milwaukee, WI; Michigan Technical University, Houghton, MI; Milwaukee Area Technical College, Milwaukee, WI; Milwaukee School of Engineering, Milwaukee, WI; University of Dayton, Dayton, OH; University of Wisconsin, Milwaukee, WI; University of Wisconsin, Kenosha, WI; and Wichita State University, Wichita, KS have joined GLCC on a non-dues basis.

No other changes have been made in either the membership or planned activity of the GLCC. Membership in GLCC remains open, and GLCC intends to file additional written notification disclosing all changes in membership.

On February 25, 1991, GLCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 15, 1991 (56 FR 11274).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-2471 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984 National Center for Manufacturing Sciences, Inc.

Notice is hereby given that, on October 31, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Center for Manufacturing Sciences, Inc. ("NCMS"), filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and describing the status of its research projects. The notification was filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies recently were accepted as active members of NCMS: Applied Intelligent Systems, Inc., Ann Arbor, Michigan;Applied Science and Technology, Inc., Woburn, Massachusetts; Automated Precision, Inc., Gaithersburg, Maryland; Boride Corporation, Traverse City, Michigan; Control Gaging, Inc., Ann Arbor, Michigan; and Flavors Technology, Inc., Amherst, New Hampshire.

The following organizations recently were accepted as affiliate members of NCMS: Rensselaer Polytechnic Institute, Troy, New York; and Texas State Technical College, Waco, Texas.

The following company recently resigned as an active member of NCMS: Claris Corporation, Santa Clara, California.

The name of one NCMS active member cited in previous filings has been changed and should, therefore, be amended. The reference to "Savior" cited in previous filings should now refer to "Flexis Control Incorporated."

NCMS has initiated research efforts directed toward its objectives in the general areas of manufacturing data and factory control; manufacturing operations; manufacturing processes and materials; production equipment design, analysis, testing, and control; and technology transfer. Other projects directed toward its objectives in those areas are also under consideration. One such effort is a research project concerned with the development of rapid prototyping, which was initiated on October 16, 1991, and involved two NCMS active members (Texas Instruments Incorporated and United Technologies Corporation, acting through its Pratt & Whitney Group) and a non-NCMS member (Baxter Healthcare Corporation).

Except as indicated above, no other changes have been made in the membership, objectives, or planned activities of NCMS.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act, notice of which the Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375). NCMS filed additional notifications on April 15, 1988, and May 5, 1988, notice of which the Department published in the **Federal Register** on June 2, 1988 (53 FR 20194). NCMS also filed additional notifications on July 11, 1988, September 13, 1988, December 8, 1988, March 9, 1989, August 10, 1989, November 3, 1989, January 29, 1990, April 27, 1990, July 31, 1990, November 7, 1990, February 5, 1991, March 18, 1991, April 29, 1991, and July 25, 1991, notices of which the Department published in the **Federal Register** on August 19, 1988 (53 FR 31771), November 4, 1988 (53 FR 44680), January 18, 1989 (54 FR 2006), April 13, 1989 (54 FR 14878), September 18, 1989 (54 FR 38461), November 29, 1989 (54 FR 49122), February 28, 1990 (55 FR 7045), June 5, 1990 (55 FR 22964), August 28, 1990 (55 FR 35194), December 10, 1990 (55 FR 50786), March 12, 1991 (56 FR 10444), May 16, 1991 (56 FR 22740), June 13, 1991 (56 FR 27273) and September 4, 1991 (56 FR 43796), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-2470 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum

Notice is hereby given that, on November 19, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act") the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 90–10, titled "Aerobic Biodegradation of MTBE—A Basic Fate and Biokinetics Evaluation," filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objective of the research program to be performed in accordance with said project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties participating in Project No. 90–10, together with the nature and objectives of the research program, are given below.

The current parties to PERF Project No. 90–10 identified by this notice are:

Amoco Oil Company, Naperville, IL 60566–7011.
Atlantic Richfield Company, Los Angeles, CA 90071.
B. P. America, Inc., Cleveland, OH 44128–2837.
Chevron Research Co., Richmond, CA 94802–0627.
Exxon Research and Engineering Company, Florham Park, NJ 07932–0101.
Mobil Oil Corporation, Fairfax, VA 22037–0001.
Phillips Petroleum Company, Bartlesville, OK 74004.
Shell Development Company, Houston, TX 77251–1380.

The nature and objective of the research program performed in accordance with Project No. 90–10 is to study the aerobic biodegradability of methyl–tertiary–butyl–ether (MTBE) in laboratory scale reactors. The work will consist of the following technical tasks: to study the progress of biodegradation of MTBE in typical activated sludge reactors, to evaluate the enhancement of its biodegradation by co-substrate addition, and to obtain kinetics coefficients. Information regarding participation in this Project may be obtained by contracting Dr. Paul T. Sun, Shell Development Company, P.O. Box 1380, Houston, Texas 77251–1380.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–2469 filed 1–31–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum Research Program

Notice is hereby given that, on December 2, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), members of the Petroleum Environmental Research Forum, who are participants in a Research Program more specifically identified in paragraph 3 below, have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the Research Program and (2) the nature and objectives of the Research Program. The Notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified conditions. Pursuant to section 6(b) of the Act, the identities of the parties participating in the project and the nature and objectives of the project are given below:

1. The parties to the Research Program are:

Amoco Oil Company, Research and Development Department, Naperville, IL.
Chevron Research and Technology Company, Richmond, CA.
Exxon Research and Engineering Company, Florham Park, NJ.
Stratco, Inc., Leawood, KA.
Texaco, Inc., Research and Development, Port Arthur, TX.
Union Oil Company of California, Brea, CA.

2. Letters of Intent to participate in said Research Program have been signed by:

B. P. America, Inc., Cleveland, OH.
Mobil Research and Development Corporation, Princeton, NJ.

3. The nature and objectives of the Research Program are to study the aerosol formation potential of sulfuric acid/hydrocarbon mixtures. The Research Program will include field testing of various sulfuric acid mixtures.

4. Information about participating in the Research Program may be obtained by contacting: Mr. Ralph Cecchetti, Exxon Research and Engineering Company, P.O. Box 101, Florham Park, NJ 07932–0101.

Membership in this Forum remains open, and the parties intend to file additional written notification disclosing all changes in membership to this Forum.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92–2472 Filed 1–31–92; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984—Laboratory Study of the Electrical Resistivity of Brine Solutions at Elevated Temperature and Pressure

Notice is hereby given that, on January 2, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled Laboratory Study of the Electrical Resistivity of Brine Solutions at Elevated Temperature and Pressure. The notification discloses (1) the identity of the parties to the project, and (2) the nature and objectives of this project. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general area of planned activities are given below.

The parties to the project are: Amoco Production Company, Tulsa, OK; Conoco, Inc., Ponca City, OK; Exxon Production Research Company, Houston, TX; Mobil Research and Development Corporation, Dallas, TX; and Shell Development Company, Houston, TX.

The purpose of the project is to conduct a laboratory study by which the electrical resistivity of several brine solutions and mixtures will be measured and analyzed to provide a quantitative characterization of these solutions at temperatures up to 250 degrees Celsius and pressures up to 15,000 psi. The major research tasks are (1) the design and fabrication of a multiple-sample test fixture; (2) laboratory chemistry tests using sodium chloride and calcium chloride; (3) testing of brine solution concentrations prepared at or near room temperature which fell within the conventional range of electrical resistivity log interpretations charts; (4) testing of sodium chloride and calcium chloride brine solutions having salt concentrations sufficient to produce saturated solutions at temperatures up to 200 degrees Celsius and higher in the multiple-sample test fixture.

Membership in this project remains open, and the parties intend to file additional written notification disclosing

all changes in membership of this project.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-2465 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Wet Welding At Greater Depth—Phase II

Notice is hereby given that, on December 11, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Wet Welding At Greater Depth—Phase II." The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under the specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are: Amoco Corporation, Naperville, IL (effective September 30, 1991); Chevron Corporation, Richmond, CA (effective September 30, 1991); Exxon Production Research Company, Houston, TX (effective September 30, 1991); Mobil Research & Development Corporation, Dallas, TX (effective September 30, 1991); and Shell Development Company, Houston, TX (effective September 30, 1991).

The purpose of the project is to perform a step-by-step progression in the investigation of the variables expected to improve wet welding electrode operability at water depths up to 300 feet of sea water. The major research tasks are: (1) testing of tubular versus solid wire electrodes; (2) selection of either tubular or solid wire technology based upon the extensive testing of such wire technology in laboratory welding experiments; (3) an optimization analysis of the following variable factors: level of carbonates and fluorides, level of ionizers, level of iron and manganese, and level of deoxidants; and (4) the formulation, manufacture and complete characterization of the hybrid electrode with the most desirable features.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-2466 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-01-M

Bureau of Justice Statistics

Continuation of Justice Information Policy Assistance Program

AGENCY: Office of Justice Programs, Bureau of Justice Statistics.

ACTION: Solicitation for Award of Cooperative Agreement.

SUMMARY: The purpose of this notice is to announce a public solicitation for the continuation of the Bureau of Justice Statistics (BJS) Criminal Justice Information Policy program. The program, which has been in existence since 1978, serves as the primary liaison between BJS, the States, and other Federal agencies, on issues relating to the quality, content, management, use and exchange of criminal history record information (CHRI). Projects supported under the program include, but are not limited to, biannual major national conferences on criminal justice data quality, comprehensive national surveys of State criminal history date quality, numerous workshops on emerging issues such as the uses of Automated Fingerprint Identification Systems (AFIS) and forensic uses of DNA, the first joint Task Force on Disposition Reporting (including members of both State repositories and State judiciary), ongoing review of State legislative developments and preparation of a biannual compendium of State legislation, and extensive preparation of materials and training in areas such as data quality auditing.

The key element in all of these efforts is the extent to which the program provides for direct input by States, for coordination among the States on program activities, and for liaison between the project and other relevant agencies of the Federal Government such as the Federal Bureau of Investigation (FBI), the Immigration and Naturalization Service (INS), the Office of Technology Assessment (OTA), etc. The presently proposed project, which is designed to continue these activities, will be funded under a cooperative agreement.

DATES: Proposals must be postmarked on or before March 2, 1992.

ADDRESSES: Proposal should be mailed to: Applications Coordinator, Bureau of Justice Statistics, room 1144-D, 633 Indiana Avenue, NW 20531.

FOR FURTHER INFORMATION CONTACT: Carol G. Kaplan, Chief, Federal Statistics and Information Policy Branch at the above address. Telephone (202) 307-0759.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Justice Statistics Criminal Justice Information Policy Assistance (JIPA) program represents the primary response of BJS to its legislative charter to "Identify, analyze and participate in the security and information policies which impact on Federal and State criminal justice operations and related statistical activities." See section 302(c)(22) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3732(c)(22). The program is designed to assist State in upgrading the quality of State criminal history record systems and in addressing the issues which ensure the utility of criminal history records for both criminal and non-criminal justice purposes. The program also serves as a conduit for the coordination with States and other Federal agencies of high visibility BJS activities relating to, for example, the interstate system for the exchange of criminal history record data among States and with the FBI, development of a national fingerprint capability, development of procedures for presale firearm record check systems, etc.

The BJS Program was initiated over 15 years ago, concurrently with the issuance of Department of Justice Regulations set out at 28 CFR part 20 which required that States adopt procedures to ensure that criminal history records were accurate, complete, secure, and disseminated only to authorized users. Since its inception, projects undertaken under the program have focussed on the rapidly changing technology, legislation and policies affecting criminal history record systems. Of equal importance, the project has served as the primary liaison among the States on issues of data quality and criminal record exchange. It provides the direct liaison between the States and BJS in this area. The program also mainains liaison with the Bureau of Justice Assistance which administers the Edward Byrne State and Local Law Enforcement Formula Grant program. The 1990 amendments to the Omnibus Crime Control and Safe Streets Act of 1986, as amended, require that at least 5 percent of these grant funds be used for

the improvement of criminal justice records.

Specifically, tasks funded under this program over the past 15 years have included the conduct of four national conferences on criminal justice data quality and data management. These conferences, which have each attracted over 125 persons from all parts of the country, have included speakers representing the Congress, the Department of Justice and State criminal justice practitioners, researchers, and members of the judiciary. Proceedings of these conferences, the most recent of which was held in Washington, DC, in June 1991, have also been prepared and widely distributed.

In addition to the national conferences, smaller workshops have been conducted to explore the issues and technologies in emerging areas such as automated fingerprint technology, forensic uses of deoxyribonucleic acid (DNA), dissemination techniques and strategies to improve data quality. Documents prepared on the basis of State input at these workshops have formed the basis for a series of BJS reports on varying issues relating to data quality and information policy. In addition to DNA and AFIS, reports in this series address "hot" files, investigative files, original records of entry and the release of data for non-criminal justice purposes such as employment screening. These reports are available through the National Criminal Justice Reference Service (NCJRS).

On the more operational level, the project has also produced reports and training materials detailing specific strategies for improving data quality and three manuals on the auditing of data quality in criminal history record systems. Periodic reports have also been prepared following studies of, for example, the potential liability of law enforcement personnel for erroneous release of identifiable criminal history records and the impact of new identification technologies (such as retinal scans).

On an ongoing basis the program also maintains contact with representatives of the State repositories and other State personnel having responsibility for operation of the State criminal record system. In addition to serving as a continuing resource regarding the status of criminal record systems in the States, the project monitors changes in State legislation impacting on privacy and record management and, on a biannual basis, collects and classifies State legislation in the *Compendium of State Privacy Legislation* which is issued by BJS. Full texts of statutes are maintained both by the project and at NCJRS.

Major national surveys are also conducted under this project. Most recently, the results of the first comprehensive review of the status of criminal history record systems and policies in all 50 States were analyzed and compiled as a report under the project. Other surveys have focussed on requirements of State legislation and the nature of State operating practices.

To establish better working relations between the State record repository and State judiciary, the first joint task force was established under the project to develop recommendations for better exchange of data between courts and the record center. A report on these findings is currently under preparation.

A key element in all of these activities has been the coordination of project efforts with State personnel and the extent to which the project has brought together States for the joint analysis of policies which effect the exchange of criminal data.

Another key component of activity under this project has focussed on the interstate exchange of identification and criminal record date and the procedures for linkage of data among States and with the Federal Government. In this connection, the project has served as a major source of coordination between BJS and the States and other Federal agencies such as the FBI, the INS, and the OTA.

Lastly, and most recently, the project has responded to increasing Federal interest in the development of procedures to identify felons who illegally attempt to purchase firearms. Activities have included conducting the National Conference on Improving the Quality of Criminal History Records. The Conference included a panel which specifically addressed State procedures to identify ineligible purchasers.

Objectives

The major purpose of this award is to support the continuation of activities currently being funded under the ongoing Criminal Justice Information program. The programmatic objective is to continue support for the joint efforts by BJS and the States, and, where appropriate, other relevant Federal agencies, in the development, analysis and implementation of policies and programs which improve the quality and utility of criminal history data.

Type of Assistance

Assistance will be made available under a cooperative agreement.

Statutory Authority

The cooperative agreement to be awarded pursuant to this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate under 42 U.S.C. 3732(c)(22).

Eligibility Requirements

The solicitation is open to non-profit organizations only.

Scope of Work

The objective of the proposed project is to continue activities initiated under the ongoing BJS Criminal Justice Information Policy program. Specifically, the recipient of funds will:

1. Identify, on the basis of existing information and contact with the States, two issues relevant to current policies affecting criminal justice records, and prepare reports on these issues for publication by BJS. Preparation of such reports should include, as appropriate, analyses of existing State legislation, current technology, and State activity in the area under consideration. If necessary, a workshop of State representatives should be convened to discuss and provide input for the reports. Final decisions on subjects for these reports will be made by BJS.

2. Conduct the second BJS national survey of State criminal history record systems and prepare a report analyzing the survey results for publication by BJS. The goal of the survey will be to respond to requests from Congress, criminal justice practitioners, and researchers for information describing the existing status of criminal record systems nationally. The survey should be designed to replicate the original survey which provided data as of 1989 (see BJS publication *Survey of Criminal History Information Systems*, NCJ 125620) and to provide a comprehensive and national assessment of the status of record systems and policies in all 50 States as of 1991. Any modifications to the original survey, including the survey instrument, will be agreed to jointly with BJS.

3. Convene a major national conference to promote the public discussion of data quality issues, including technical developments, uses of data for felon identification checks, and interstate exchange of data. To provide for the broader review of presentations and relevant materials, the proceedings should be compiled for publication by BJS. The conference, to be hosted jointly with BJS, should include high level Federal, State and local policy makers, representatives of the judiciary, criminal justice practitioners, researchers, and, if

appropriate, representatives of State or Federal legislative bodies. Time and location for the meeting will be jointly agreed upon with BJS. Costs under the project should cover staff, materials, presentations and logistics, but not cover costs of attendee participation or travel.

4. Convene and conduct one meeting for a working group including representatives of the State repositories, judiciary, prosecutors, correctional agencies and other data users. This working group will develop recommendations and strategies for increasing the exchange and utility of criminal record data. The project should develop discussion materials and background information for use by the working group. Selection of persons to serve as part of the working group will be made jointly with BJS. A report describing the activities and recommendations of the working group should be prepared for submission to BJS.

5. Maintain a resource of information regarding State activity, legislation and CHRI status and provide ad hoc assistance to States and to BJS on these matters. This may include assisting States through referrals to other States, reference to written materials, etc. Also, the recipient of funds will conduct ad hoc activities at the request of BJS involving, for example, the informal rapid turn-around telephone survey of States on a particular current issue or the collation of materials on a new issues associated with CHRI technology or policy.

All products will be submitted on a schedule to be determined jointly with BJS. BJS anticipates that the products will be spaced throughout the period of the award.

Award Procedures

Proposals should describe in appropriate detail the efforts to be undertaken in furtherance of each of the activities described in the Scope of Work. Information should focus on activities to be undertaken in the initial 12 month period but should also include a general discussion of three year goals and objectives of the program. Information on staffing levels and qualifications should be included for each task and descriptions of experience relevant to the project should be included.

Applications will be competitively reviewed by a BJS selected panel which will make recommendations to the Director of BJS. Final authority to enter into a cooperative agreement is reserved for the Director who may, at his discretion, determine that none of the applications shall be funded.

Applications will be evaluated on the overall extent to which they respond to be goals of the criminal justice information program, demonstrate an understanding and ability to perform the specific activities to be conducted, and appear to be fiscally feasible and efficient. In particular, the applicant will be evaluated on the basis of:

1. Knowledge and expertise in the current and historical conditions of criminal justice records systems as they exist at both the State and Federal level. Particular emphasis will be given to knowledge and experience relating to current technologies, the status of State and Federal legislation, current and prior operating policies and a historical and current knowledge of the issues which affect the exchange of data between State and Federal systems.

2. Expertise in the identification and analysis of issues and policies which affect the operation of criminal history records systems, the exchange of data among States and the Federal Government, and the release of data for noncriminal justice purposes such as, for example, presale firearm checks.

3. Expertise and experience in the analysis of legislation and State regulations relating to criminal history records and the privacy of data maintained in the State criminal history record systems.

4. Contact and experience in dealing with Federal and State representatives on issues relating to criminal history record policies. Particular emphasis will be given to: (a) experience in dealing with relevant personnel in Federal agencies, such as INS, the FBI and the Bureau of Alcohol, tobacco and Firearms, on issues relating to the development and improvement of national criminal history record systems and the use of criminal record data for criminal and noncriminal justice purposes such as presale firearm background checks; and (b) ongoing organizational and staff connections with representatives of the States (including criminal justice practitioners, policy makers, and record management personnel) sufficient to ensure direct State input to products produced under the project.

5. Demonstrated ability to produce high quality reports and conduct national conferences and workshops on sensitive issues for an audience of professional policy analysts, researchers, criminal justice practitioners, legislators and the general public.

6. Demonstrated fiscal, management and organization capacity (including availability of professional and support staff) suitable for providing sound program management for this multi-faceted effort.

7. Reasonableness of estimated costs for the total project and for individual cost categories.

Application and Awards Process

An original and three (3) copies of a full proposal must be submitted on SF-424 (Revision 1988) including the Certified Assurances. Proposals must be accompanied by OJP Form 4061/6, Certifications Regarding Lobbying, Debarment, Suspension and other Responsibility Matters; and Drug Free Workplace. Applicants must complete the certificate regarding lobbying and, if appropriate, complete and submit Standard Form LLL, Disclosure of Lobbying Activities.

Proposals must include both narrative descriptions and a detailed budget. The narrative shall describe activities as discussed in the previous section. The budget shall contain detailed costs of personnel, fringe benefits, travel, equipment, supplies and other expenses. Contractual services or equipment must be procured through competition or the application must contain an applicable sole source justification.

Awards will be made for a period of 12 months with an option for two additional continuation years conditional upon availability of funds and the quality of the initial performance and products. Costs are estimated at not to exceed $425,000 for the initial 12-month period.

Steven D. Dillingham,

Director, Bureau of Justice Statistics.

[FR Doc. 92-2391 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-18-M.

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 8, 1991, and published in the Federal Register on October 17, 1991, (56 FR 52075), Abbott Laboratories, Attn: D-209, Abbott Park, Abbott Park, Illinois 60064-3500, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of benzoylecgonine (9180), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant

Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of a basic class of controlled substance listed above is granted.

Dated: January 22, 1992.

Gene R. Haislip,

Deputy Assistant Administration, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-2413 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-09-M

DRUG ENFORCEMENT ADMINISTRATION

Manufacturer of Controlled Substances; Registration

By Notice dated October 8, 1991, and published in the Federal Register on October 17, 1991, (56FR52075), Applied Science labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-ethylamphetamine (1475)	I
cis-4-Methylaminorex (1590)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-methylenedioxyamphetamine (MDA) (7400).	I
N-hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-methylenedioxy-N-ethylamphetamine (7404).	I
3,4-methylenedioxymethamphetamine (MDMA) (7405).	I
Psilocyb in (7437)	I
Psilocyn (7438)	I
Ethlyamine analog of phencyclidine (7455).	I
Pyrrolidine analog of phencyclidine (7458).	I
Thiophene analog of phencyclidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-piperidinocyclohexane-carbonitrile (PCC) (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 22, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-2414 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Registration of Claims of U.S. Nationals Against the Government of Albania

AGENCY: Foreign Claims Settlement Commission of the United States, Justice.

ACTION: Notice.

SUMMARY: This notice announces the commencement by the Foreign Claims Settlement Commission of a program for registration of claims of United States nationals (U.S. citizens, corporations and other legal entities) against the Government of Albania for losses resulting from uncompensated nationalization, expropriation, confiscation, or other taking of real property and other property rights and interests by the Albanian regime which took power at the end of World War II.

DATES: The deadline for registration of claims is March 31, 1992.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 601 D Street, NW., room 10430, Washington, DC 20579, (202) 208-7730 or FAX (202) 208-2816.

Notice of Commencement of Claims Registration Program, and of Program Completion Date

The Foreign Claims Commission of the United States, an independent, quasi-judicial agency within the U.S. Department of Justice, has begun a program which will enable United States nationals (private citizens, corporations, and other legal entities) to register claims against the Government of Albania for losses resulting from uncompensated nationalization, expropriation, confiscation, or other taking of real property and other property rights and interests by the Albanian regime which took power at the end of World War II.

Diplomatic relations between the Government of the United States and the Government of Albania were broken off after the end of World War II. Relations were reestablished on March 15, 1991. A Memorandum of Understanding signed on that day by the two Governments provides that, at the request of either Government, they shall enter into negotiations for the prompt settlement of claims and other financial and property matters that remain unresolved.

The information collected in the Commission's claims registration program will be turned over to the U.S. Department of State to serve as the possible basis for negotiation of a claims settlement agreement between the United States and Albania. The information will otherwise remain confidential.

Requests for claim registration forms should be directed to the following address: Foreign Claims Settlement Commission, Attn: Albanian Claims Regulate, Washington, DC 20579.

Forms may also be requested in person at the offices of the Commission, 601 D Street, NW., room 10430, Washington, DC, or by telephone at 202-208-7730.

The deadline for filing a registration form is March 31, 1992.

Note: The registration of a claim in this program will not constitute the filing of a formal claim against Albania. Nor will it ensure that a claim will be covered by any future agreement. Provisions for the formal filing of claims will be made at a later date. However, failure to file will lessen the amount of information available to the Department of State as a basis for pursuing a satisfactory claims settlement agreement, and thus could reduce the amount of any recovery available to pay claims.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105-0049, expiration date January 31, 1993.

Stanley J. Glod,

Chairman,

[FR Doc. 92-2429 Filed 1-31-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Advisory Council on Unemployment Compensation; Establishment

In accordance with the provisions of the Federal Advisory Committee Act and section 908 of the Social Security Act, as amended by the Emergency

Unemployment Compensation Act of 1991, the Secretary of Labor has established the Advisory Council on Unemployment Compensation (hereinafter called the Council).

The Council will advise the President and Congress on the effectiveness of the unemployment compensation program and shall conduct a study to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency and any other aspect of the program and make recommendations for improvement.

No later than February 1, 1994, the Council shall prepare and submit a written report to the President and to the appropriate committees of Congress. This report will contain—

(1) the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under section 908 of the Social Security Act; and

(2) the findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.

The Council is established for four years.

The Unemployment Insurance Service of the Employment Training Administration of the Department of Labor will provide the Council with the appropriate administrative assistance.

Interested persons are invited to submit comments regarding the establishment of the Advisory Council on Unemployment Compensation. Such comments should be addressed to: Esther R. Johnson, Department of Labor, Employment and Training Administration, Unemployment Insurance Service, 200 Constitution Ave. NW., Washington, DC 20010; Telephone (202) 523–7831.

Signed at Washington, DC this 24th day of January, 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–2512 Filed 1–31–92; 8:45 am]

BILLING CODE 4510–30–M.

Employment and Training Administration

Job Training Partnership Act: Youth Opportunity Unlimited (YOU) Demonstration Projects

AGENCY: Employment and Training Administration, DOL.

ACTION: Notice of availability of funds and of Solicitation for Grant Applications (SGA).

SUMMARY: The Employment and Training Administration, U.S. Department of Labor, announces the intent to award grants on a competitive basis to conduct demonstration projects aimed at high-risk youth growing up in poverty inner-city neighborhoods and rural areas. The purpose of these grants will be to marshall public and private resources to improve lives of youth in these areas. These projects will emphasize the notion of community with resources concentrated into high-poverty inner-city neighborhoods and rural areas; provide for a fairly structured array of job training interventions; and requires a number of complimentary initiatives involving schools, the private sector and various local government and community agencies. Target neighborhoods for inner-city projects must have a poverty rate of a least 30 percent and rural areas must have poverty rate of at least 20 percent. Applications for urban grants must be submitted by the service delivery area(s) that operate programs under the Job Training Partnership Act (JTPA); and applications for rural grants must be submitted by State JTPA offices.

DATES: The applications will be available February 18, 1992. The requests must be made in writing to the address below. Telephone and telefacsimile (FAX) will not be honored. The request must cite SGA/DAA 92–002 and must include two (2) self-addressed labels. Requests will be honored on a first come, first served basis until the supply of 300 is exhausted. The closing date for receipt of proposals will be April 3, 1992, 2 p.m. Eastern time. Any applications not meeting the designated place, date, and time of delivery will not be considered.

ADDRESSES: Mail your request to obtain Solicitation for Grant Application (SGA) to: U.S. Department of Labor, Employment and Training Administration, Office of Grants and Contract Management, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., room C–4305, Washington, DC 20210, Attention: Brenda Banks, Reference GSA/DAA 92–002.

FOR FURTHER INFORMATION CONTACT: Brenda Banks, Telephone: (202) 535–8702 (This is not a Toll Free Number).

SUPPLEMENTARY INFORMATION: The Employment and Training Administration, U.S. Department of Labor, will award approximately four (4) grants at $500,000 each for the first year of operations. Pending availability of funds, effective program operation and the needs of the Department, second-year support also will be provided. The period of performance will be one (1) year from date of execution by the Government.

Signed at Washington, DC on January 27, 1992.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 92–2510 Filed 1–31–92; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endownment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for expedited clearance, by February 28, 1992, the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by February 26, 1992.

ADDRESSES: Send comments to Mr. Dan Chenok, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202–682–5401).

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a revision of a currently approved collection of information. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average

burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: FY 93 Opera-Musical Theater Application Guidelines.

Frequency of Collection: One time.

Respondents: State or local governments; Non-profit institutions.

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or local arts agencies that apply for funding under specific Opera-Musical theater categories. This information is necessary for the accurate, fair and thorough consideration of competing proposal in the peer review process.

Estimated Number of Respondents: 325.

Average Burden Hours per Response: 26.03.

Total Estimated Burden: 8,459.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-2420 Filed 1-31-92; 8:45 am]

BILLING CODE 7537-01-M

National Endowment for the Arts

International Exhibitions Federal Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Federal Advisory Committee on International Exhibitions to the National Council on the Arts will be held on February 20, 1992 from 9:30 a.m.-5 p.m. in room M-07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9:30 a.m.-10:30 a.m. and 3:30 p.m-5 p.m. The topics will be welcoming remarks, updates and policy discussion.

The remaining portion of this meeting from 10:30 a.m.-3:30 p.m. is for the purpose of reviewing proposals for support under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-2474 Filed 1-31-92; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training Section) to the National Council on the Arts will be held on February 19, 1992 from 9 a.m.-5:30 p.m. and February 20 from 9 a.m.-5 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 20 from 4 p.m.-5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on February 19 from 9 a.m.-5:30 p.m. and February 20 from 9 a.m.-4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 28, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92-455 Filed 1-31-92; 8:45 am]

BILLING CODE 7537-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Special Exhibitions B Section) to the National Council on the Arts will be held on February 24-28, 1992 from 9:15 a.m.-5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 24 from 9:15 a.m.-10 a.m. The topics will be opening remarks and general discussion.

The remaining portions of this meeting on February 24 from 10 a.m.-5:30 p.m. and February 25-28 from 9:15 a.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies,

National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 27, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–2473 Filed 1–31–92; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning (formerly Inter-Arts) Advisory Panel (Interdisciplinary Projects II Section) to the National Council on the Arts will be held on February 19–21, 1992 from 9 a.m.–7 p.m. and February 22 from 9 a.m.–5 p.m., in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on February 22 from 2 p.m.–5 p.m. The topics will be guidelines review and policy discussion.

The remaining portions of this meeting on February 19–21 from 9 a.m.–7 p.m. and February 22 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 21, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of § 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: January 27, 1992.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 92–2475 Filed 1–31–92; 8:45 am]

BILLING CODE 7537–01–M.

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 40th meeting on Thursday, February 20 and 21, 1992, 8:30 a.m.-5:00 p.m., room P–110, 7920 Norfolk Avenue, Bethesda, MD. The entire meeting will be open to public attendance. Notice of this meeting was previously published in the **Federal Register** Thursday, January 23, 1992 (57 FR 2793).

The agenda for the subject meeting shall be as follows:

A. Continue work on a systems analysis approach to review the overall high-level waste program.

B. Report on EPRI follow-on meeting concerning the EPA's High-Level Waste Standards.

C. Hear a presentation on the latest draft of EPA's high-level waste standards.

D. Report on recent attendances at the Low-Level Waste Forum Winter Meeting in San Diego, CA.

E. Hear a presentation on international safety principles for radioactive waste.

F. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Date January 28, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–2491 Filed 1–31–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Subcommittee on Mechanical Components; Meeting

The Subcommittee on Mechanical Components will hold a meeting on February 19, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 19, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the status of the motor-operated valve (MOV) and the check valve operability programs and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify

the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the ACRS Staff Engineer, Mr. Elpidio G. Igne, (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 27, 1992.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–2493 Filed 1–31–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co., Ohio Edison Co., Pennsylvania Power Co., and Beaver Valley Power Station, Unit No. 1; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Duquesne Light Company (the licensee) to withdraw its September 4, 1990, application for proposed amendment to Facility Operating License No. DPR–66 for the Beaver Valley Power Station, Unit No. 1.

The proposed amendment would have revised the Appendix A Technical Specifications by changing the required number of operable incore-detector thimbles. Specifically, the change would have reduced the required number of operable incore-detector thimbles to 50% from 75%, and modified the Surveillance Requirements to provide for increased uncertainty allowances to account for the reduced minimum operability requirement.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on January 10, 1991 (56 FR 1033). However, by letter dated December 23, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 4, 1990, and the licensee's letter dated December 23, 1991, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland this 24th day of January 1992.

For the Nuclear Regulatory Commission.

Albert W. De Agazio, Sr.,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–2492 Filed 1–31–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–31570–EA; ASLBP No. 92–657–02–EA; (Materials License No. 35–27026–01)]

Patrick K. C. Chun, M.D.; Notice of Hearing and Related Matters

January 27, 1992.

Before Administrative Judges: Morton B. Margulies, Chairman, Thomas D. Murphy, and Harry Rein.

Notice is hereby given that at the request of licensee Patrick K. C. Chun, M.D., a hearing will be conducted in the captioned proceeding in accordance with the provisions of subparts B and G of part 2 (Rules of Practice For Domestic Licensing Proceedings) of title 10 of the Code of Federal Regulations. (10 CFR part 2, subparts B and G). The time and place of hearing will be set by further notice.

On November 12, 1991, the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support (Deputy Executive Director) issued an order titled "Patrick K. C. Chun, M.D.; Order Prohibiting Involvement in Certain NRC Licenced Activities (Effective Immediately)." 56 FR 58, 716–17.

The order alleges that Dr. Chun, in requesting an amendment to NRC License No. 13–23664–01, willfully misrepresented his association with the Tulsa Heart Center. It further alleges that as a result 10 CFR 30.9, which requires completeness and accuracy of information in applications, was violated. The Deputy Executive Director consequently found that he lacked the requisite reasonable assurance that Dr. Chun would conduct NRC-licensed activities in compliance with the Commission's requirements, and that the health and safety of the public would be protected. He then determined, among other things, that Dr. Chun is prohibited for one year from the date of the order from holding an NRC license or being named on an NRC license in any capacity. For a period of two years Dr. Chun was ordered to provide notice to the NRC of specified activities. Relying on 10 CFR 2.202 the order was made effective immediately. The order further provided that if Dr. Chun requested a hearing "the issue to be considered at such hearing shall be whether this Order should be sustained."

The order of November 12, 1991 was modified by a corrective order of November 27, 1991 to cure an inconsistency in the language in the ordering paragraphs IV. A and B. 56 FR 63, 985–86.

Dr. Chun has exercised his right to a hearing and as a result this formal adjudicatory proceeding was initiated. Before commencing the hearing, the Board requests that the parties confer and consider steps that will expedite the proceeding and reduce its costs. The matters to be considered should include the defining and simplifying of issues, the identifying of witnesses, the establishment of a schedule for further actions in the proceeding, including discovery, if any, and any other matters that may aid in the orderly disposition of the proceeding.

Dr. Chun should be aware that he has a right to be represented by counsel in all phases of the proceeding.

The parties should also consider settlement, a process encouraged by the Commission. Settlement can provide an expeditious and cost effective way of resolving the dispute.

The parties shall, by letter, report back to the Board no later than February 12, 1991, the results of their discussions. Future scheduling will depend on the achievements of the parties.

The NRC Staff is requested to serve copies of the documents underlying its charge against Dr. Chun as soon as practicable.

It is so ordered.

Bethesda, Maryland January 27, 1992.

For the Atomic Safety and Licensing Board.

Morton B. Margulies,

Chairman, Administrative Law Judge.

[FR Doc. 92–2494 Filed 1–31–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and budget

Agency Clearance Officer—Kenneth Fogash (202) 272–2142.
Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.
New
Rule 17AD–16; File No. 270–363

Notice is hereby given pursuant to the Paper work Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), that the Securities and Exchange Commission has submitted for clearance proposed Rule 17Ad–16, which would require a registered transfer agent to provide written notice to a qualified registered securities depository when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address. Four hundred fifty transfer agents will incur an estimated average burden of thirty minutes to comply with the Rule.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1992.

[FR Doc. 92–2427 Filed 1–31–92; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272–2142.
Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20594.
Extension
Form S–8, File No. 270–63

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval a request for extension of clearance of Form S–8, used to register securities issued pursuant to employee benefit plans under the Securities Act of 1933.

It is estimated that approximately 2,854 Form S–8 registration statements are filed at an estimated average of 49 burden hours per form. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235–0066), New Executive Office Building, room 3208, Washington, DC. 20503.

Dated: January 13, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2428 Filed 1–31–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30290; File No. SR-Amex–91–27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Options on the S&P MidCap 400 Index

January 27, 1992.

I. Introduction

On October 10, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("Commission") a proposal to trade European-style [3] options on the Standard & Poor's ("S&P") Midcap 400 Index ("MidCap 400" and "Index"). This order approves the Amex's proposal.

The proposed rule change was noticed for comment in Securities Exchange Act Release No. 29855 (October 24, 1991), 56 FR 56252. An amendment to the proposed rule change was noticed for comment in Securities Exchange Act Release No. 30095 (December 18, 1991), 56 FR 67108.[4] No comments were received on the proposed rule change for the amendment.

II. Description of the Proposal

A. General

The Amex proposes to trade options on the MedCap 400, an index [5] composed of 400 domestic stocks from four broad-market sectors: Industrials, utilities, financials and transportation. Stocks from 61 separate industry groups are represented within the broad-market sectors.[6] The MedCap 400 is designed to track the performance of domestic stocks that fall in the middle-capitalization range of securities.

B. Composition of the Index

Currently, 246 companies in the Index are listed on the New York Stock Exchange ("NYSE"), 141 on the National Association of Securities Dealers ("NASD"), Automated Quotation System ("NASDAQ"), and 13 on the Amex. All NASDAQ stocks in the Index are designated as national market system securities by the NASD, meaning, among other things, that real-time last sale reports are available for these stocks. No one stock comprises more than 1.53% of the Index's total value (as of November 29, 1991) and the percentage weighting of the 50 largest in the Index accounts for only 34.51% of the Index's value.[7]

The market capitalization of the stocks in the Index ranges from a high of $5.64 billion to a low of $135.2 million, with the mean and median being $1.01 billion and $701.1 million, respectively.[8]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] A European-style option only can be exercised during a limited period before the option expires.

[4] The Amex's amendment to the filing: (1) Modified the expiration cycle for the Index options; (2) provided for 2½ point strike price intervals for near-the-money series in near-term expiration months; (3) stated that the Index options would be settled based on the opening prices of component stocks; and (4) provided for the automatic execution of public customer Index options orders of up to 100 contracts in size.

[5] The calculation of a market-weighted index involves taking the summation of the product of the price of each stock in the index and the shares outstanding for each issue. In contrast, a price-weighted index involves taking the summation of the prices of the stocks in the index.

[6] Among others, the industry groups represented in the Index include: Aerospace/defense, oil and gas, restaurants, pharmaceuticals, waste management, railroads, shipping, electric utilities, insurance and specialty retailers. *See* Exhibit A to letter from Ellen T. Kander, Special Counsel, Options Division, Amex, to Howard L. Kramer, Assistant Director, Commission, dated January 2, 1992 ("Amex Letter").

[7] Exhibit E to Amex Letter, *supra* note 6.

[8] *Id.* at 2.

The total number of shares outstanding for the stocks in the Index ranges from a high of 253.3 million shares to a low of 5.14 million shares.[9] The price per share of the stocks in the Index ranges from a high of $212.51 to a low of $3.74.[10] Finally, the trading volume of the stocks in the Index ranges from a high of 1,601,349 average shares per day to a low of 5,997 average shares per day, with the median and mean being 133,318 and 79,663, respectively.[11]

C. Calculation of the Index and Contract Specifications

The MidCap 400 is calculated continuously,[12] using the last sale price for each component stock in the Index, and is disseminated every 15 seconds throughout the trading day.[13] To calculate the Index, the sum of the market value of the stocks in the Index is divided by the base period market value (divisor), and the result is multiplied by 100. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect such events as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings and other capitalization changes.

The Amex proposes to use strike price intervals of 2½ points for certain near-the-money series in near-term expiration months when the Index is at a level below 200.5-point strike price intervals for other options series with expirations up to one year, and 25 to 50 point-strike price intervals for longer-term options. The Amex also proposes to list MidCap 400 options in the four consecutive near-term expiration months plus five additional further-term expiration months in the March cycle. For example, consecutive expirations of January, February, March and April plus the following June, September, December, March and June expirations would be listed.

In addition, the Exchange proposes that the Index value for purposes of settling MidCap 400 options ("Settlement Value") be calculated on the basis of opening market prices on the business day prior to the expiration date of such options ("Settlement Day").[14] Under the proposal, Settlement Day will normally be the Friday preceding "Expiration Saturday."[15] In the event that a component security in the Index does not trade on Settlement Day, the closing price from the previous trading day will be used to calculate the Settlement Value. Accordingly, trading in MidCap 400 options will normally cease on the Thursday preceding an Expiration Saturday.

D. Maintenance of the Index

In order to ensure that the MidCap 400 contains a representative sample of the stocks that represent the performance of the middle-capitalization segment of the market, S&P selects component securities based on the following market and economic criteria.[16] First, the company's market value must be between $300 million and $5 billion.[17] Second, the company's liquidity ratio must be 0.20 or higher.[18] Third, corporate insiders must not hold stock representing more than 60% of the value of the company and the company cannot have 50% or more of its stock held by other corporations.[19]

In addition, S&P considers industry group representation in selecting stocks for the MidCap 400. Moreover, in order to avoid "overweighting" of utility and financial stocks, electric utilities and regional bank stocks are selected on the basis of their geographic representation as well as the above criteria.[20] Finally, any stocks already in the S&P 500 Stock Index are excluded from the MidCap 400.

E. Position and Exercise Limits, Margin Requirements, Trading Halts and Other Applicable Exchange Rules

Consistent with classifying the MidCap 400 as broad-based, the proposal provides that Exchange rules that are applicable to the trading of options on broad-based indexes will apply to the trading of options on the Index.[21] Specifically, among others, Exchange rules governing margin requirements[22] and trading halt procedures[23] that are applicable to the trading of broad-based index options will apply to options traded on the Index. In addition, the Amex's proposal establishes a position limit of 25,000 contracts on the same side of the market, with no more than 15,000 of such contracts in series with the nearest expiration. Finally, the Exchange proposes to allow public customer orders in MidCap 400 options of up to 100 contracts in size to receive automatic execution through the Amex's automatic execution facility, termed Auto-Ex.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[24] The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 400 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks

[9] Exhibit A to Amex Letter, *supra* note 6.

[10] *Id.*

[11] *Id.*

[12] The MidCap 400 is calculated for S&P by Automated Data Processing ("ADP"), a subsidiary of S&P. Bridge Data also calculates the MidCap 400 and its calculation is used in the event that the ADP calculation of the Index value is unavailable.

[13] The Index is published daily in, among other places, The wall Street Journal and the The New York Times and is available during trading hours from quotation vendors such as ADP and Bridge Data. The Index formula is available in the S&P 500 Stock Index Directory.

[14] The aggregate exercise value of the option contract is calculated by multiplying the Index value by the Index multiplier, which is 100.

[15] For any given expiration month, the Index Options will expire on the third Saturday of the month.

[16] S&P makes four major weighting adjustments during the year, usually near the end of a calendar quarter, and monitors each MidCap 400 component stock on a daily basis for individual weighting adjustments and for corporate actions which may have an impact on the Index.

[17] *See* Special Report on the S&P MidCap 400 Index, enclosed with letter from Ellen T. Kander, Special Counsel, Options Division, Amex, to Howard L. Kramer, Assistant Director, Commission, dated January 7, 1992, at 7.

[18] The liquidity ration is determined by dividing a company's trading volume for the previous 12 months by the average number of total common shares outstanding. For example, if a company's average monthly trading volume over the previous 12 months was 500,000, and there were 12 million shares outstanding, then the company's liquidity ratio would be 0.50. *Id.* at 6.

[19] S&P, in making the determination as to whether a company has 50% or more of its stock held by other corporations, includes in its determination investment companies with greater than 5% ownership, but does not include broker-dealers holding shares in "street name." *Id.* at 8–9.

[20] In addition, some potential companies are eliminated from inclusion in the MidCap 400 for various reasons. For example, investment companies, such as closed-end mutual funds, are not included in the Index because their equity performance reflects the performance of a portfolio of securities rather than industry or company specific fundamentals. In addition, foreign companies are not included in the Index, except for some Canadian industrial companies which conduct a significant proportion of their business within the U.S. market and for which the majority of trading activity occurs on U.S. exchanges. Moreover, S&P excludes real estate investment companies and other investment trusts that allow investors to participate indirectly in the performance of real assets such as commercial or residential property. Finally, S&P excludes limited partnerships because their ownership and capitalization structure exposes investors to liabilities and tax treatment not found in corporate equity securities. *Id.* at 5–8.

[21] *See* Amex Rules 900C–980C.

[22] *See* Amex Rule 462.

[23] *See* Amex Rule 918C.

[24] 15 U.S.C. 78f(b)(5) (1988).

associated with their portfolios more efficiently and effectively. Accordingly, the Commission believes MidCap 400 options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the middle-capitalization range of U.S. equity securities, a segment of the U.S. market that previously has not been the subject of standardized options trading. By broadening the hedging and investment opportunities of investors, the Commission believes that MidCap 400 options will serve to promote the public interest, protect investors, and contribute to the maintenance of fair and orderly markets.

The trading of MidCap 400 options, however, raises several issues, namely, issues related to index classification, index design, surveillance and market impact. The Commission believes, for the reasons discussed below, that the Amex has adequately addressed these issues.

A. Broad-Based Index

The Commission finds that classifying the Index as broad-based, and, thus, permitting Exchange rules applicable to the trading of broad-based index options to apply to MidCap 400 options is appropriate. Specifically, the Commission believes it is consistent with the Act to designate the Index as broad-based because the MidCap 400 reflects a substantial segment of the U.S. equities market, in general, and mid-level capitalized U.S. securities, in particular. The Index consists of 400 of the most actively traded middle-capitalized securities in the United States.[25] In addition, as of December 5, 1991, the total capitalization of the Index was approximately $376 billion. The MidCap 400 also includes stocks of companies from 61 different industry groups, no one of which dominates the Index.[26] Moreover, the Index represents a broad cross-section of domestic mid-level capitalized stocks, with no single stock comprising more than 1.53% of the Index's total value (as of November 29, 1991).[27] The percentage weighting of the fifty largest issues in the Index also accounts for only 34.51% of the Index's value. Finally, 236 (59%) of the 400 stocks includes in the Index, representing 68.1% of the capitalization of the Index currently, are the subject of standardized options trading, and many of the other Index component stocks are eligible for options trading.

B. Index Design and Structure

The broad diversification, large capitalization, and liquid markets of the Index's component stocks significantly minimizes the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of the domestic mid-level capitalized stocks, with no single industry group or stock dominating the Index. Second, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 133,318 and 79,663 shares, respectively.[28] Third, S&P has developed procedures and criteria designed to ensure that the Index maintains its broad representative sample of stocks in the middle-capitalization range of securities.[29] Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of a small number of issues would affect significantly the Index's value.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchanges trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the Amex, NASD and the NYSE, along with other U.S. securities exchanges, are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[30]

D. Market Impact

The Commission believes that the listing and trading of MidCap 400 options on the Exchange will not adversely impact the underlying securities markets. First, as described below, the Index is broad-based and no one stock or industry group dominates the Index. Second, as noted above, the stocks contained in the Index have large capitalizations and are actively traded. Third, existing Amex stock index options rules and surveillance procedures will apply to MidCap 400 options. Fourth, the Exchange has established reasonable position and exercise limits for the MidCap 400 options that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like other standardized options traded in the United States.

Finally, the Commission believes that the Amex's other proposed rule changes to accommodate the trading of MidCap 400 options are consistent with the Act. First, the Commission believes it is reasonable for the Amex to use 2½-point strike price intervals for near-the-money series in near-term months when the Index is below 200. This will enable investors to more finely tailor their options positions to achieve their investment objectives and, as Amex represented, will not result in capacity problems for the Options Price Reporting Authority ("OPRA") or options information vendors.[31] Second,

[25] Specifically, the mean and median capitalization for the 400 companies, as of December 30, 1991, was $1,014,594,000 and $701,119,000, respectively. Amex Letter, *supra* note 6, at 3.

[26] Specifically, as of November 29, 1991, the percentage weighting of MidCap stocks in the 10 largest industry groups was as follows: (1) Electric utilities, 13.57%; (2) banks, 8.98%; (3) health care services, 4.80%; (4) chemical and materials, 4.54%; (5) medical products and supplies, 4.14%; (6) foods and beverages, 4.02%; (7) specialty retailers, 3.60%; (8) computer hardware, 2.88%; (9) manufacturing, special services, 2.62%; and (10) computer software, 2.60%.

[27] Specifically, as of November 29, 1991, the percentage weighting of the 10 largest component stocks in the Index was 10.56%.

[28] For the six-month period ending November 1991, 346 of the 400 (86%) companies within the Index had an average daily trading volume greater than 30,000 shares per day. Those companies represent 91.25% of the market capitalization of the Index. The average daily trading volume of the 20 most heavily traded companies in the Index, representing 7.74% of the market capitalization of the Index, was 698,295 shares per day. Exhibit B to Amex Letter, *supra* note 6.

[29] *See supra* notes 16–20 and accompanying text.

[30] ISG was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The participation of exchanges within the ISG and their sharing of surveillance information is governed by an ISG agreement. The most recent amendment to the ISG agreement, which incorporates the original agreement and all amendments made thereafter, was signed by members January 29, 1990. *See* Second Amendment to Intermarket Surveillance Group Agreement, January 29, 1990.

[31] *See* letter from Charles H. Faurot, Assistant Vice President, Market Data Services, Amex, to Alden Adkins, Chief, Office of Automation and International Markets, Division of Market Regulation, Commission, dated January 16, 1992. Specifically, Amex represents that both the projected increase in: (1) The size of vendors' data bases to handle the additional options resulting from MidCap 400 options trading, and (2) the volume of information through OPRA as a result of the Index options will be minimal.

the Commission believes that an Auto-Ex order size limit of 100 contracts for MidCap 400 options is reasonable because it will result in the efficient and timely execution of customer orders. Based on representations from the Amex, the Commission also believes that the Exchange will have sufficient processing capacity to accommodate the anticipated order flow through Auto-Ex resulting from this order size limit.[32] Third, the Commission believes the Amex's proposed expiration cycle for the MidCap 400 options is reasonable because it provides investors sufficient flexibility to establish their desired options positions.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act [33] that the proposed rule change (File No. SR-Amex-91-27) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2430 Filed 1-31-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30291; File No. SR-GSCC-92-01]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Netting of Zero Coupon Government Securities.

January 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 21, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue to include in its netting system book-entry zero coupon Government securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements maybe examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On January 31, 1991, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (File No. SR-GSCC-90-06) to expand GSCC's netting service to include zero-coupon Government securities ("zeros").[1] GSCC now requests that the Commission make such authority permanent.

In its approval order of January 31, 1991 ("approval order"), the Commission stated that it was approving the proposed rule change on a temporary basis "[i]n light of the significance of this proposal to GSCC and its clearing members, and in light of the probability that GSCC's methodology for risk analysis will be modified at a future date * * *" The Commission indicated that "[I]t believes that GSCC's method of determining the applicable margin factor [for zeros] is reasonable in light of the lack of historical data on which to base the margin assessment." The Commission noted, however, its concern about "the accuracy with which GSCC's current methodology reflects the historical and implied volatility of zeros."

Since the approval order was issued, GSCC has gained almost one year's experience in the netting of zeros without incurring any problems. GSCC's margining process for zeros remains conservative and prudent, and now has the benefit of the use of GSCC's internal price volatility data base. Moreover, as described below, it has modified and improved its risk assessment systems in various respects. In view of the above, GSCC believes that its method for margining zeros is an appropriate one.

1. Use of GSCC's Internal Price Volatility Data Base to Assess the Adequacy of GSCC's Margin Factors

As GSCC noted in its original rule filing, it is not aware of any satisfactory third party source of historical price volatility data on zeros from which to establish applicable margin factors. GSCC stated in that filing that it intended to develop and maintain its own historical price volatility base for zeros, as it does for all other securities eligible for the net, commencing at the time that it started to net zeros.

GSCC now has over one year's worth of its own price volatility data for zeros; this data base is sufficient for use in assessing and monitoring the adequacy of its margin factors for zeros. GSCC hereby represents that the information contained in this data base will be considered on a periodic basis by the Membership and Standards Committee of GSCC's Board of Directors ("Board") in reviewing the sufficiency of GSCC's margin factors for zeros.

2. Continued Use of a Conservative Margining Process

GSCC, in making zeros eligible for its net, recognized that these securities require different considerations from a margining perspective than do other Treasury securities ("non-zeros") because zeros generally are subject to greater price volatility than are non-zeros with the same maturity. In view of this, GSCC established a new, separate margin factor schedule for zeros, which takes into account, based on data contained in the Treasury Department's liquid capital standards, the greater price volatility presented by zeros in general, and the greater price volatility which arises as the remaining maturity of a zero security increases.

The currently applicable margin percentages for zeros range from being the same as those for non-zeros on the short end of the maturity spectrum to two-and-a-half times that applicable to non-zeros on longest term end. GSCC's internal price volatility data for zeros indicate that these percentages for zeros are prudent and conservative, particularly on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

3. Strengthening of GSCC's Margining Process Generally

Since the approval order was issued, GSCC has filed a proposed rule change (File No. SR-GSCC-91-04) to implement a number of changes to its margining

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[32] *See* letter from Omar F. Soykan, Director, Technical Planning, Information Technology Division, Amex, to Victoria Berberi-Doumar, Attorney, Office of Automation and International Markets, Division of Market Regulation, Commission, dated January 24, 1992.

[33] 15 U.S.C. 78s(b)(2) (1988).

[34] 17 U.S.C. 200.30-3(a)(12) (1990).

[1] Securities exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032.

and funds collection processes that will further strengthen that process. Certain of these changes will particularly complement GSCC's process for mitigating the risk arising from guaranteeing net settlement positions in zeros, and serve to ensure that this risk is minimal.

In sum, in view of GSCC's positive experience in the netting of zeros, the conservative nature of its margining process for zeros, its ability now to use internal price volatility data to assess the adequacy of its margin factors for zeros, and the general strengthening of GSCC's margining process, GSCC believes that its method for margining zeros is an appropriate one and that its authority to net zeros should be made permanent.

(b) The proposed rules change will help further GSCC's ability to ensure orderly settlement in the Government securities marketplace, by expanding the scope of Government securities eligible for its netting system. Thus it is consistent with Section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GS will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to such period that the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of GSCC. All submissions should refer to file number SR–GSCC–92–01 and should be submitted by February 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2431 Filed 1–31–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30292; File No. PTC–92–01]

Self-Regulatory Organizations; The Participants Trust Company; Notice of Filing of a Proposed Rule Change Relating to a Modification of its Rebate Policy

January 27, 1992.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on January 10, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The proposed rule change consists of modifications to PTC's rebate policy relating to excess earnings from principle and interest payments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify PTC's policy with respect to the rebate of revenues to its Participants, as modified by PTC's Board of Directors on November 26, 1991, as hereafter described, and to file with the Commission a required policy statement on invested principal and interest payments received but not yet disbursed ("P&I").

The Commission, in its approval order of June 14, 1991, for the elimination by PTC of proration charges for the cost of financing P&I advances,[1] required that PTC's Board of Directors adopt a policy statement by December, 1991 "addressing the use of excess earnings from invested P&I receipts." Such a policy statement was adopted by PTC's Board of Directors on November 26, 1991 and was incorporated with the proposed revised policy on rebates. Accordingly, the policy statement on rebates is being filed for two reasons: To respond to the Commission's requirement for a Board Policy statement on invested P&I, and to obtain approval for a modification of the existing rebate policy as hereafter described.

In October 1990, PTC's Board of Directors adopted a specific policy on rebates which codified the goals of PTC's formation in 1989 as set forth in PTC's Offering Statement. The policy states that PTC may distribute revenues received from participants based on: earnings in event of such rebate, projected financial needs of PTC and the desirability of paying dividends. Under the current rebate policy, the source of the rebate is all sources of revenue, which includes income from invested P&I. The rebate of each participant,

[1] Securities Exchange Act Release No. 29311 (June 14, 1991), 56 FR 28783.

however, is calculated on the basis of a participant's pro rata share of total service fees. Under the proposed policy, each participant's rebate will be calculated on the basis of both its pro rata share of service fees and its pro rata share of income from invested P&I.

PTC intends to announce a distribution based on the new policy to all participants which were such as of December 31, 1991. At the current time, PTC anticipates that the total amount to be distributed will be approximately $15 million.

Since the proposed rule change provides for the equitable allocation of dues, fees, or other charges, PTC believes that the proposed rule change is consistent with the section 17A of Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will have an impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on the proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR–PTC–92–01 and should be submitted by February 24, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2432 Filed 1–31–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—18507; 812–7701]

The Galaxy Fund, et al.; Notice of Application

January 30, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Galaxy Fund (the "Trust"), SMA Equities, Inc. ("SMA"), and TBC Funds Distributor, Inc. ("TBC").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 18(f), 18(g) and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order permitting existing and future portfolios of the Trust and other investment companies for which TBC acts or will act in the future as principal underwriter (together with the Trust, the "Companies") to offer three classes of shares in the same portfolio, which classes will be identical except for the allocation of certain expenses attributable to a shareholder services plan or a 12b-1 plan, voting rights, exchange privileges, class designation, and sales charges and transfer agency expenses assessed.

FILING DATE: The application was filed on March 19, 1991 and amended on September 16, 1991 and January 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applications with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 18, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Galaxy Fund, 440 Lincoln Street, Worcester, Massachusetts 01605–1959; SMA Equities, Inc., 440 Lincoln Street, Worcester, Massachusetts 01605–1959; and TBC Funds Distributor, Inc., One Boston Place, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Eva Marie Carney, Senior Attorney, at (202) 504–2274 or Max Berueffy, Branch Chief, at (202) 272–3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company. The Trust offers shares representing interests in the following investment portfolios: Money Market Fund, Government Fund, Tax-Exempt Fund, and U.S. Treasury Fund (hereinafter referred to, together with any future portfolios of the Trust and any existing and future portfolios of any other Company covered by the application declaring net investment income as a dividend to shareholders on a daily basis, as the "Daily Dividend Funds"), and Short-Term Bond Fund, Intermediate Bond Fund, High Quality Bond Fund, New York Municipal Bond Fund, Tax-Exempt Bond Fund, Small Company Equity Fund, Equity Value Fund, Equity Growth Fund, Equity Income Fund, International Equity Fund, and Asset Allocation Fund (hereinafter referred to, together with any future portfolios of the Trust and any existing and future portfolios of any other Company covered by the application declaring net investment income other than on a daily basis, as the "Non-Daily Dividend Funds"). (All Daily Dividend Funds and Non-Daily Dividend Funds are referred to collectively as "Funds.")

Shares of each Fund of the Trust are sold by SMA, the Trust's distributor and a registered broker-dealer. Fleet/Norstar Investment Advisors Inc. ("Fleet/Norstar") is the Trust's investment adviser and Wellington Management Company ("Wellington") is sub-adviser to the International Equity Fund. 440 Financial Group of Worcester, Inc. ("440 Financial") is the Trust's administrator and transfer and dividend disbursing agent. The Chase Manhattan Bank, N.A. ("Chase") is custodian for each Fund of the Trust. Prior to November 1, 1991, TBC served as the Trust's distributor.

2. Applicants wish to tailor certain shareholder and distribution services and related expenses to the investment needs of particular investors. To do so, applicants propose that each Company offer three different classes of shares of each of the Funds, denominated "Non-12b-1 Shares," "12b-1 Shares," and "Trust Shares."

3. Non-12b-1 Shares will be sold to the public through banks and other financial institutions which have entered into servicing agreements ("Shareholder Service Organizations") with a Company, pursuant to the Company's servicing plan ("Non-12b-1 Plan"), to provide necessary administrative support services to customers of Shareholder Service Organizations who are the beneficial owners of Non-12b-1 Shares. Such services may include sub-accounting, establishing and maintaining these customers accounts and records, aggregating and processing purchase and redemption orders, answering these customers routine inquiries regarding their investment in Non-12b-1 Shares, forwarding shareholder communications from the Company, and similar services. These services will not duplicate the services provided to the Funds by a Company's administrator, distributor, transfer agent, and custodian (the "Service Contractors"), which relate to the internal operations of the Funds, custody of assets, maintenance of Funds' books and records, or to the Funds' relationship with the record owners, rather than beneficial owners, of Non-12b-1 Shares, such as forwarding proxies and shareholder reports, processing purchase and redemption orders, and distributing prospectuses to record owners.

4. While a Non-12b-1 Plan will not authorize payments for activities intended to result in the sale of Non-12b-1 Shares, a Company will adopt and implement the plan for its Non-12b-1 Shares in accordance with procedures under rule 12b-1 under the Act, except that shareholders of Non-12b-1 Shares will not enjoy the voting rights specified in the rule.

5. Shareholders of Non-12b-1 shares will bear the expense of the Non-12b-1 Plan. A Fund of the Trust will pay a Shareholder Service Organization for its services under a Non-12b-1 Plan and the related servicing agreement ("Non-12b-1 Plan Payments") an amount not to exceed .60% of the average daily net asset value of the applicable Non-12b-1 Shares on an annualized basis. In the case of other Companies, the level of payments made pursuant to a Non-12b-1 Plan may vary based upon an independent determination of the Board of Directors/Trustees of the Company.

6. The 12b-1 Shares will be sold to investors purchasing directly from a Company's distributor or to clients of financial institutions which have entered into agreements with a Company ("12b-1 Organizations"), pursuant to the Company's plan of distribution ("12b-1 Plan"), to provide necessary distribution and administrative shareholder support services to their customers who directly or beneficially own 12b-1 Shares. Distribution activities financed in accordance with a 12b-1 Plan may include advertising and marketing, printing new prospectuses and sales literature, and paying broker-dealers and others for distribution assistance. A 12b-1 Plan may also provide for the furnishing of administrative support services of essentially the same nature as those furnished under a Non-12b-1 Plan. Distribution services provided under a Compnay's 12b-1 Plan will not duplicate the services provided to the Funds by the Company's distributor nor will the administrative shareholder support services provided under a 12b-1 Plan duplicate the services provided to the Funds by the Service Contractors.

7. A Company will adopt and implement a 12b-1 Plan for its 12b-1 Shares in accordance with Rule 12b-1 under the Act. Holders of 12b-1 Shares will bear the expense of the 12b-1 Plan. A Fund of the Trust will pay a Service Organization for its services provided according to the 12b-1 Plan and the related agreement ("12b-1 Plan Payments") an amount not to exceed 1.00% of the average daily net asset value of the applicable 12b-1 Shares on an annualized basis. In the case of other Companies, payments made pursuant to a 12b-1 Plan may vary based upon an independent determination by the Board of Directors/Trustees of the Company and subject to shareholder approval by the shareholders of the Company's affected class of Shares.

8. Trust Shares will be sold primarily to financial institutions and will not be subject to the additional expenses of a Non-12b-1 or 12b-1 Plan. A Company and its Service Contractors will provide no services to holders of Trust Shares that they do not provide to holders of Non-12b-1 or 12b-1 Shares.

9. In addition to expenses incurred under a Non-12b-1 or Rule 12b-1 Plan, certain transfer agency expenses, identified as attributable to a specific class of shares, may be allocated on a class rather than Fund basis.

10. Shares of a Fund may be exchanged only for shares of another Fund with the same class designation. In addition, to the extent permitted by a Fund's current prospectus, shares of a Fund may be sold with a sales load which, due to distribution methods that will differ among the classes, may be different for each class of shares.

11. Since the Non-12b-1 and 12b-1 Shares of the Non-Daily Dividend Funds will bear the expense of the applicable Non-12b-1 and 12b-1 Plan Payments (together "Plan Payments") and the cost of certain transfer agency services attributable to the respective classes, the net income of Non-12b-1 and 12b-1 Shares and the dividends payable to such Shares will be lower than the net income of and the dividends payable to the Trust Shares of the same Fund. Similarly, because of such Plan Payments, to the extent that a Non-Daily Dividend Fund has undistributed net income, the net asset value of its Non-12b-1 or 12b-1 Shares may be lower than the net asset value of its Trust Shares. Dividends paid to each class of Shares of a Non-Daily Dividend Fund will, however, be declared and paid (and the net asset value of each class will be determined) on the same days and at the same times, and, except as noted with respect to the Plan Payments and transfer agency expenses, will be determined in the same manner and paid in the same amounts.

12. With regard to the Daily Dividend Funds, the net asset value of all outstanding shares representing interests in the same Daily Dividend Fund will be computed on the same days and at the same times by adding the value of all portfolio securities and other assets belonging to such Daily Dividend Fund, subtracting the liabilities charged to such Daily Dividend Fund, and dividing the result by the number of outstanding shares. Since it is expected that each class of shares of a Daily Dividend Fund will have the same net asset value per share, the gross income will be allocated on a *pro rata* basis to each outstanding share

in the Daily Dividend Fund regardless of class, and all non-class expenses (such as advisory, administrative, and custodial fees) incurred by the Daily Dividend Fund will be borne on a *pro rata* basis by such outstanding shares, except for the Plan Payments and certain transfer agency expenses that are borne solely by the applicable Non-12b-1 or 12b-1 Shares. Therefore, the net income of (and dividends payable to) the Non-12b-1 and 12b-1 Shares will be different than the net income of (and dividends payable to) the Trust Shares in the same Daily Dividend Fund. Dividends paid to each class of shares in a Daily Dividend Fund will, however, be declared and paid on the same days and at the same time, and, except as noted with respect to the Plan Payments and certain transfer agency expenses, will be determined in the same manner and paid in the same amounts.

13. The representations in the application and the conditions imposed by any order will apply to each Company (as that term is defined herein) relying on the order.

Applicants' Legal Analysis

1. Applicants request an exemptive order pursuant to section 6(c) of the Act to the extent that the proposed implementation of the Non–12b–1 and 12b–1 Plans with respect to the Non–12b–1 and 12b–1 Shares might be deemed: (1) to result in a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1) of the Act; and (2) to violate the equal voting provisions of section 18(i) of the Act. The implementation of the plans and assessment of differing transfer agency expenses may result in stock of a class with "priority over (another) class as to distribution of assets or payments of dividends" and with unequal voting rights because Non–12b–1 and 12b–1 Shares will bear the expenses noted and will enjoy exclusive voting rights, if any, with respect to matters concerning the applicable plan as described herein.

2. Applicants assert that the proposed allocation of expenses and voting rights is equitable and will not discriminate against any group of shareholders. Investors purchasing Non–12b–1 or 12b–1 Shares will bear the costs associated with the services provided pursuant to the applicable plan and certain transfer agency services, but will enjoy exclusive shareholder voting rights with respect to matters affecting that plan. Conversely, investors purchasing Trust Shares will not bear those expenses or exercise those voting rights. Moreover, all holders of Shares are expected to benefit from the proposed arrangement since certain of the Fund's fixed costs will be spread over a greater number of shareholders.

3. Applicants believe that by implementing Non–12b–1 and 12b–1 Plans with respect to the Non–12b–1 and 12b–1 Shares, the Funds may achieve added flexibility in meeting the service and investment needs of shareholders and future investors. If these plans are implemented, the expense of Plan Payments will be borne by those shareholders who benefit from such services and not by the holders of Trust Shares. While this objective might be achieved by creating additional investment portfolios each of which would duplicate a Fund and be designed for those investors who require the additional services provided with respect to Non–12b–1 or 12b–1 Shares, applicants believe that this alternative would be inefficient and unnecessary because it would incur unnecessary accounting and bookkeeping costs and impair effective investment management of the additional portfolios. Applicants submit that unless the additional portfolios grew at a sufficient rate and to a sufficient size, they could be faced with liquidity and diversification problems.

4. Applicants also assert that the proposed arrangement will not involve borrowings and will not affect the Funds' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a Fund, since all shares will participate *pro rata* in the Fund's income and expenses, with the exception of the proposed Plan Payments and certain transfer agency expenses. Accordingly, applicants submit that the requested exemption is appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund and will be identical in all respects, except for differences related solely to:

(a) Priorities with respect to the payment of dividends and distributions and such priorities will reflect only the impact of Plan Payments, certain transfer agency expenses attributable to a particular class, and any other incremental expenses subsequently identified that should be properly allocated to one class and which are approved by the Commission pursuant to an amended order;

(b) The net asset values of the various classes of shares in a Non-Daily Dividend Fund that may differ as a result of the Plan Payments and certain transfer agency expenses and the allocation of Fund expenses and income in proportion to the different net asset value of each class;

(c) Voting rights on matters that pertain to the applicable plan and related agreements;

(d) Exchange privileges, as described in the prospectuses (and statements of additional information) of the Funds;

(e) Class designation; and

(f) Sales loads assessed due to differing distribution methods.

2. The Directors/Trustees of a Company, including a majority of the independent Directors/Trustees, will approve the creation of additional classes of shares of a Fund from time to time by an affirmative vote prior to the creation of any such class. The minutes of the meetings of the Directors/Trustees regarding the deliberations of the Directors/Trustees with respect to the approvals necessary to create any additional class of shares will reflect in detail the reasons for the Directors/Trustees' determination that the creation is in the best interests of both the Company involved and its shareholders.

3. On an ongoing basis, the Directors/Trustees of a Company, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts between the interests of the classes of shares. The Directors/Trustees, including a majority of the independent Directors/Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. A Company's adviser and distributor will be responsible for reporting any potential or existing conflicts to the Directors/Trustees. If a conflict arises, the adviser and distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The 12b–1 Plans and Plan Payments relating to the sale of 12b–1 Shares will be approved and reviewed by the Directors/Trustees in accordance with the requirements and procedures set forth in rule 12b–1, both currently and as that rule may be amended in the future. Each of the Companies' 12b–1 Plans (and, to the extent required, any agreements related to the applicable 12b–1 Plans) will be submitted to the public shareholders of such 12b–1 class

of shares for approval at the next meeting of shareholders after the initial issuance of such shares of such class. Such meeting is to be held within 16 months of the date that the registration statement relating to such class first becomes effective, or, if applicable, the date that the amendment of the registration statement necessary to offer such class first becomes effective.

5. Each Non–12b–1 Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1(b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that holders of Non–12b–1 Shares will not have the voting rights specified in rule 12b–1. In evaluating any Non-12b–1 Plan, the Directors/Trustees of a Company will specifically consider whether (a) the Non–12b–1 Plan is in the best interest of the applicable class of shares and their respective shareholders, (b) the services to be performed pursuant to the Non–12b–1 Plan are required for the operation of the applicable class of shares, (c) the Shareholder Service Organizations can provide services at least equal in nature and quality to similar services provided by others, including the Company, and (d) the fees for such services are fair and reasonable in light of the usual and customary charges made by other entities, especially non-affiliated entities, for services of the same nature and quality.

6. Each agreement entered into pursuant to a Non–12b–1 Plan will contain a representation by the Shareholder Service Organization that any compensation payable to the Shareholder Service Organization in connection with the investment of its customers' assets in a Fund (a) will be disclosed by it to its customers, (b) will be authorized by its customers, and (c) will not result in an excessive fee to the Shareholder Service Organization.

7. Each agreement entered into pursuant to a Non–12b–1 Plan will provide that, in the event an issue pertaining to the plan is submitted for shareholder approval, the Shareholder Service Organization providing services will vote any shares held for its own account in the same proportion as the vote of those shares held for its customers' accounts.

8. The Directors/Trustees of a Company will receive quarterly and annual statements concerning Plan Payments (including, in the case of 12b–1 Plans, expenditures relating to distribution) complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale (in the case of 12b–1 Shares) or servicing of a particular class of shares will be used to justify any distribution (in the case of 12b–1 Shares) or servicing fee charged to that class. Expenditures not related to a particular class will not be presented to the Directors/Trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Directors/Trustees in the exercise of their fiduciary duties.

9. Dividends paid by a Company with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same times, on the same day, and will be in proportion to each class of shares' respective net asset value, except that any Plan Payments and certain transfer agency expenses relating to a 12b–1 or Non-12b–1 class of shares will be borne exclusively by the applicable 12b–1 or Non-12b–1 class of shares.

10. The methodology and procedures for calculating the net asset values, dividends and distributions of the classes of shares and the proper allocation of expenses between those classes has been reviewed by an expert (the "Expert") who has rendered a report to Applicants, which has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to Applicants that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Company (which the Company agrees to provide), will be available for inspection by the Commission staff, upon the written request to the Company for such work papers, by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrators or Associate and Assistance Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset values, dividends and distributions of the classes of shares and the proper allocation of expenses between such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition (10) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (10) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert of appropriate substitute Expert.

12. The prospectus for each Fund with more than one class will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares may receive different compensation for selling or servicing one particular class of shares over another class in the same Fund.

13. SMA with respect to the Trust and TBC will respect to any other Company will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

14. The conditions pursuant to which the Order is granted and the duties and responsibilities of the Directors/Trustees of a Company with respect to the Non-12b–1 and 12b–1 Plans and related agreements will be set forth in guidelines which will be furnished to the Directors/Trustees of the Company.

15. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, transfer agency expenses, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares of such Fund in every prospectus, regardless of whether all classes of shares in the Fund are offered through the prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extend any advertisement or sales literature describes the expenses or performance data applicable to any class of shares in a Fund, it will also disclose the respective

expenses and/or performance data applicable to all classes of shares in such Fund. The information provided by a Company for publication in any newspaper or similar listing of each Fund's net asset value and public offering price will present each class of shares separately.

16. Each Daily Dividend Fund will have more than one class of shares outstanding only when and for so long as such Fund declares its dividends on a daily basis, accrues its Plan Payments and certain transfer agency expenses daily, and has received undertakings from the persons that are entitled to receive payments under the Non-12b–1 and 12b–1 Plans and for transfer agency services waiving such portion of any such payments to the extent necessary to assure that payments (if any) required to be accrued by any such class of such shares on any day do not exceed the income to be accrued to such class on that day. In this manner, the net asset value per share for all shares in a Daily Dividend Fund will remain the same.

17. Applicants acknowledge that the grant of the requested Order will not imply Commission approval, authorization, or acquiescence in any particular level of payments that a Company may make pursuant to a Non-12b–1 or 12b–1 Plan in reliance on the Order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–2645 Filed 1–31–92; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2546]

New Jersey; Declaration of Disaster Loan Area

Atlantic County and the contiguous counties of Burlington, Camden, Cape May, Cumberland, Gloucester, and Ocean in the State of New Jersey constitute a disaster area as a result of damages caused by a major coastal storm which occurred October 30–31, 1991. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 5, 1992 and for economic injury until the close of business on Oct. 5, 1992 at the address listed below: Disaster Area 1 Office, Small Business Administration, 360 Rainbow Boulevard South, 3rd Floor, Occidental Chemical Center, Niagara Falls, NY 14302, or other locally announced locations.

The interest rates are:

	Percent
For Physican Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Business and non-profit organizations without credit available elsewhere	4.000
Others (Including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 254611 and for economic injury the number is 750700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: January 3, 1992.

Paul H. Cooksey,

Deputy Administrator.

[FR Doc. 92–2377 Filed 1–31–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identity the appropriate docket number (e.g., Waiver Petition Docket Number RSGM 87–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before March 10, 1992, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Atlantic and Gulf Railroad

[Waiver Petition Docket Number RSGM 91–25]

The Atlantic and Gulf Railroad (AGLF) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The railroad operates between Sylvester and Albany, Georgia, a distance of 18 miles and between Albany and Thomasville, Georgia, a distance of 54 miles. The area is primarily rural.

Mississippi Delta Railroad

[Waiver Petition Docket Number RSGM 91–26]

The Mississippi Delta Railroad (MSDR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. The railroad operates over approximately 58 miles of track between Lula and Swan Lake, Mississippi.

Wiregrass Central Railroad Co., Inc.

[Waiver Petition Docket Number RSGM 91–27]

The Wiregrass Central Railroad Company, Inc. (WGCR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. The WGCR operates over approximately 18 miles of track between Enterprise and Waterford, Alabama. The area is primarily rural with several miles being within Fort Rucker army base.

Great Smoky Mountains Railway

[Waiver Petition Docket Number RSGM 91–28]

The Great Smoky Mountains Railway (GSMR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for 14 cabooses and 12 passenger cars. The GSMR is a 67 mile tourist railroad operating between Sylva and Andrews, North Carolina. The railroad states there have been no

problems with vandalism in this rural area.

The Hartford and Slocomb Railroad Co.

[Waiver Petition Docket Number RSGM 91–32]

The Hartford and Slocomb Railroad Company (HS) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The HS operates 22 miles of track between Dothan and Hartford, Alabama, but fewer than two cars per week are handled outside of Dothan. The locomotive is only used as an emergency backup for their regular locomotive which is fully equipped with FRA glazing. The HS operates weekdays only during daylight hours.

Maine Coast Railroad Corp.

[Waiver Petition Docket Number RSGM 91–36]

The Maine Coast Railroad Corporation (MC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives and one caboose. The railroad operates through a predominantly rural area between Brunswick and Rockland, Maine. The railroad states that there has been no vandalism relating to glazing and the cost of installing FRA glazing would be a financial hardship.

The Valley Railroad Co.

[Waiver Petition Docket Numbers RSGM 90–10 and LI 90–4]

The Valley Railroad Company (VALE) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) and §§ 229.115, Slip/Slide Alarms and 229.125(a), Headlights of the Locomotive Safety Standards (49 CFR part 229) for one locomotive. The VALE operates a scenic railroad on approximately 13 miles of track leased from the State of Connecticut. The railroad seeks relief from part 229.115, Slip/Slide Alarms and Part 229.125(a), Headlights.

Issued in Washington, DC on January 22, 1992.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 92–2425 Filed 1–31–92; 8:45 am]

BILLING CODE 4910–06–M

[BS–AP–No. 3118]

Soo Line Railroad Co.; Public Hearing

The Soo Line Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking approval of the following: the proposed discontinuance and removal of the automatic block signal system on the two main tracks between West Davenport, milepost 194.0, and High Bridge, Iowa, milepost 219.2, a distance of approximately 25.2 miles, on the Southern Division, Davenport Subdivision.

This proceeding is identified as FRA Block Signal Application Number 3118.

The FRA has issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Wednesday, March 11, 1992, in Room B–17 of the Federal Office Building located at 131 East Fourth Street in Davenport, Iowa.

Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one an will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC on January 27, 1992.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 92–2426 Filed 1–31–92; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reason for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.).

Mr. Yun Chang petitioned the agency on September 17, 1991, to conduct a defect investigation regarding alleged service brake failure due to an alleged anti-lock brake system (ABS) malfunction on all ABS-equipped 1991 Ford Taurus and Mercury Sable vehicles. ABS are designed to prevent wheel lock-up during braking by modulating the hydraulic line pressure within the service brake system. The petitioner alleged that he was involved in a serious two-car accident due to a service brake failure resulting from an ABS malfunction.

The petitioner does not detail the exact failure mode but describes his accident as occurring despite "repeated application of the brake pedal." All 1991 Taurus and Sable vehicles are equipped with a Teves Mark IV ABS that is designed to allow full service brake function should an ABS failure occur. According to the petitioner, the service brakes did not operate normally when the alleged ABS malfunction occurred.

In response to a NHTSA inquiry concerning this matter, Ford provided a total of two reports alleging problems that were possibly related to the one on which the petition is based. Further investigation by the agency, however, revealed that neither of these reports involved ABS-induced service brake failures, and that no reports of such failure, other than the petitioner's, exist.

Moreover, the Office of Defects Investigation is unable to conclude from its examination of information pertaining to Mr. Chang's accident that it occurred as a result of a malfunction in his vehicle's ABS or service brake system.

In consideration of the available information, NHTSA has concluded that there is not a reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued at the conclusion of the investigation that the petitioner has asked NHTSA to conduct. Since no evidence of a safety-related defect trend relating to the petitioner's allegations was discovered, further commitment of resources to determine whether such a trend may exist does not appear warranted. Therefore, the petition is denied.

Authority: Sec. 124, Public Law 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 28, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–2404 Filed 1–31–92; 8:45 am]

BILLING CODE 4910–59–M.

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 13]

Surety Companies Acceptable on Federal Bonds; Bankers Insurance Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under § 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, on page 30135 to reflect this addition:

Bankers Insurance Company. Business Address:
10051 Fifth Street North, St. Petersburg, FL 33733.
Underwriting Limitation b/: $683,000.
Surety Licenses c/: AL, AZ, AR, CA, FL, GA, IA, KY, LA, MS, MO, NM, PA, SC, TN, TX. Incorporation In: Florida.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6696.

Dated: January 27, 1992.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–2504 Filed 1–31–92; 8:45 am]
BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 22
Monday, February 3, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 29, 1992.

TIME AND DATE: 10:00 a.m., Thursday, February 6, 1992.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Shamrock Coal Company*, Docket No. KENT 90-137. [Issues include whether the judge erred in finding that Shamrock's violation of 30 C.F.R. § 75.403 was not of a significant and substantial nature].

It was determined by a unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-6539/(202) 709-9300 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-2694 Filed 1-30-92; 8:45 am]

BILLING CODE 6735-01-M

BOARD F GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, February 6, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2608 Filed 1-30-92; 10:36 am]

BILLING CODE 6210-01-M

NATIONAL SCIENCE BOARD

DATE AND TIME:

February 14, 1992 8:30 a.m. Closed Session

February 14, 1992 9:15 a.m. Open Session

PLACE: Arnold and Mabel Beckman Center, 100 Academy Drive, Irvine, California 92715.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Friday, February 14, 1992

Closed Session (8:30 a.m.—9:15 a.m.)

1. Minutes—November 1991 Meeting.
2. NSB and NSF Staff Nominees.
3. Vannevar Bush Award.
4. Future NSF Budgets.
5. Grants and Contracts.

Friday, February 14, 1992

Open Session (9:15 a.m.—12:00 Noon)

Swearing-in of Dr. Ian M. Ross

6. Chairman's Report.
7. Minutes—November 1991 Meeting.
8. NSB Executive Committee Report.
9. Director's Report.
10. Earthquake Science & Technology Center.

Thomas Ubois,

Executive Officer.

[FR Doc. 92-2642 Filed 1-30-92; 11:28 am]

BILLING CODE 7555-01-M

Corrections

Federal Register
Vol. 57, No. 22
Monday, February 3, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 911183-1322]

RIN 0648-AE46

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 91-31331 beginning on page 381 in the issue of Monday, January 6, 1992, make the following corrections:

§ 672.23 [Corrected]

1. On page 382, in the second column, in § 672.23(d), in the fourth line, "for" should read "from".

§ 675.23 [Corrected]

2. On the same page, in the third column, in § 675.23(d), in the third line, "Groundfish" should read "groundfish".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Special Education Programs

[CFDA No. 84.029]

Notice Inviting Applications for New Awards Under Training Personnel for the Education of Individuals With Disabilities for Fiscal Year 1992

Correction

In notice document 91-26943 beginning on page 57205 in the issue of Thursday, November 7, 1991, make the following correction:

On page 57227, at the end of the document the file line was omitted and should read as follows:

[FR Doc 91-26943 Filed 11-6-91; 8:45am]

Billing Code 4000-01-M

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 440 and 441

[MB-41-P]

RIN 0938-AF12

Medicaid Program; Required Coverage of Nurse Practitioner Services

Correction

In proposed rule document 91-30353, beginning on page 66392, in the issue of Monday, December 23, 1991, make the following corrections:

1. On page 66392, in the second column, under **SUMMARY:**, in the sixth paragraph, in the second line, "confirm" should read "conform".

2. On page 66393, in the second column, in the third paragraph, in the seventh line, "throughout" should read "through".

3. On page 66394, in the first column, under **IV. Response to Comments**, in the third line, "notable" should read "not able".

4. On the same page, in the second column, under **V. Regulatory Impact Statement**, in the sixth paragraph, in the ninth line, "11029(b)" should read "1102(b)".

5. On the same page, in the third column, in the second full paragraph, in the second line, "of" should read "or".

§ 441.10 [Corrected]

6. On page 66395, in the 2d column, in § 441.10, in the 11th and 13th lines, "Section" should read "Sections".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Action-Exchange; CA

Correction

In notice document 91-29581, beginning on page 64639, in the issue of Wednesday, December 11, 1991, make the following corrections:

1. On page 64639, in the 3rd column, in the 23rd line, "CaCA" should read "CACA".

2. On the same page, in the same column, in the 25th line, "T. 38S.," should read "T. 31S.,".

3. On the same page, in the same column, in the seventh line from the bottom of the page, "T. 315.," should read "T. 31S.,".

4. On page 64640, in the first column, in the file line at the end of the document, "FR Doc. 91-28581" should read "FR Doc. 91-29581".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

RIN 1029-AB33

Surface Coal Mining and Reclamation Operations; Underground Mining Activities; Temporary Cessation of Operations

Correction

In proposed rule document 92-1417 appearing on page 2235 in the issue of Tuesday, January 21, 1992, in the third column, in the third line from the bottom, "not" should read "now".

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Public Law 99-591; Information Collection Under Review by the Office of Management and Budget (OMB)

Correction

In notice document 91-26905 beginning on page 57031 in the issue of Thursday, November 7, 1991, make the following correction:

On page 57032, at the end of the first column, the file line was omitted and should read as follows:

[FR Doc 91-26905 Filed 11-6-91; 8:45 am]

BILLING CODE 8120-02-M

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-21; Notice 11]
RIN 2127-AE13

Federal Motor Vehicle Safety Standards; Theft Protection

Correction

In rule document 92-1344 beginning on page 2039 in the issue of Friday, January 17, 1992, make the following corrections:

1. On page 2040, in the third column, in the first full paragraph, in the first and second lines, the phrase "Petitions for Reconsideration of March 1991 Final Rule" should have been set as a heading and the paragraph should begin with "NHTSA".

2. On page 2042, in the second column, in the first full paragraph, in the sixth line, after "systems" insert ". Many manufacturers have recently redesigned their transmission lock systems".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. 89-03; Notice 02]

RIN 2127-AC09

Anthropomorphic Test Dummies--6-Year-Old Child

Correction

In rule document 91-27099 beginning on page 57830 in the issue of Thursday, November 14, 1991, make the following correction:

§ 572.73 [Corrected]

On page 57837, in the second column, the section heading should read as set forth below:

§ 572.73 Neck assembly and test procedure.

BILLING CODE 1505-01-D

federal register

Monday
February 3, 1992

Part II

Department of Veterans Affairs

38 CFR Parts 14, 19, and 20

Appeals Regulations; Rules of Practice; Final Regulations and Proposed Regulations

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 14, 19, and 20

RIN 2900-AE02

Appeals Regulations; Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is issuing final regulatory amendments revising the Board of Veterans' Appeals' (BVA) Appeals Regulations and Rules of Practice governing appeals practices and procedures within VA. Conforming amendments have also been made to other related VA regulations. The effect of these amendments will be to revise and update these regulations to reflect current law and practices and to provide information needed by individuals who wish to appeal decisions made by VA adjudicatory bodies to the BVA. The revisions are necessary in order to provide appellate procedures which conform to current law and to inform the public about those procedures.

EFFECTIVE DATE: These rules are effective March 4, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Steven L. Keller, Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233-2978.

SUPPLEMENTARY INFORMATION: On August 18, 1989, VA published in the **Federal Register** (54 FR 34334) a notice proposing amendment of part 19 and the addition of part 20 of title 38, Code of Federal Regulations, to update the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals. Conforming revisions to part 14 were also proposed.

VA received ten comments on the proposed regulations—four from service organizations, two from legal services organizations allied with a service organization, two from Members of the Board of Veterans' Appeals, one from a VA employee, and one from a private attorney-at-law.

Some commenters have referred to various sections of the Veterans' Judicial Review Act (Pub. L. 100-687). In the remarks which follow, provisions of the Act which have been codified will be referred to by their section numbers in title 38, United States Code (as amended by Pub. L. 100-687), rather than by section numbers of the Act. All references to section numbers in title 38, United States Code, throughout this document have been revised to reflect the renumbering accomplished by recent legislation.

There were several general comments, in addition to specific comments concerning individual amendments.

One commenter objected to moving the cross-references from individual sections, where they are currently located, to appendices to parts 19 and 20—asserting that this format was less helpful to the user of the regulations. VA agrees that this method of setting out cross-references is somewhat less desirable, but the change was made at the direction of the Office of the Federal Register. The BVA plans to issue an updated version of a pamphlet which includes these regulations (VA Pamphlet 1-1) within the next few months. This pamphlet version will use the old cross-reference format.

The same commenter suggested that the Rule of Practice references in part 20 be abandoned and that only the CFR citation be used. This suggestion has not been adopted. The Rule of Practice terminology is widely used by judicial and quasijudicial bodies, such as the BVA. The use of Rule numbers, as opposed to CFR citations for individual Rules of Practice, is common in appellate practice before the BVA. VA sees no benefit to be gained by abandoning this useful terminology, particularly at a time when attorneys-at-law who are very familiar with the terminology are becoming increasingly involved in appellate practice before VA field personnel and the BVA.

Finally, this commenter felt that the period of time allowed for public comment was too short—noting difficulty in preparing comments within the time allowed. With respect to this comment, the BVA notes that it is generally willing to grant reasonable requests for an extension of time within which to comment if such an extension proves necessary. This commenter did not request an extension.

One commenter suggested that regulations be promulgated "indicating specifically how BVA will handle 'errors' in previous AOJ or BVA decisions 'discovered' in the course of a current appellate review." Methods of addressing error in a prior BVA decision are set out in § 20.904; in § 20.1000, et seq.; and in a notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. VA does not believe that additional regulation on the subject of the correction of error in prior rating decisions by the agency of original jurisdiction is necessary at this time. The Board may always correct error in prior rating decisions which are properly before it on appeal and may call errors in determinations which are not properly before it to the attention of the agency of original jurisdiction.

One commenter offered several paragraphs of criticism under the heading "General Comments." These were essentially conclusionary paragraphs summarizing the nature of complaints about specific amendments. Except to the extent that they are addressed in the next two paragraphs, these comments will be discussed in the context of specific amendments.

As might be expected with a proposal of this size, some of the comments were in opposition to each other and some of the comments were internally inconsistent. One commenter essentially suggested that many of these amendments are contrary to the letter and spirit of Public Law 100-687, while another observed that many of the proposed amendments were straightforward implementations of that Act. The former's criticisms included a complaint that the amendments were too adversarial, technical and legal, while at the same time requesting such additions as formal discovery proceedings.

Some commenters were generally complimentary, expressing the view that the amendments were well structured and would facilitate an orderly appellate process. One commenter noted that many of the amendments codified existing practices.

Comments concerning specific amendments are set out in the material which follows.

No comments, suggestions, or objections were received regarding the amendments to part 14 and to §§ 19.1 and 19.2. There was a typographical error in the heading of redesignated § 14.635 (formerly § 14.637). The word "office" was placed in the wrong location. This has been corrected. With this correction, these amendments are adopted as proposed.

Three comments were received concerning the amendment of § 19.3. One commenter suggested that paragraph (b) be revised to require that BVA Sections have three Members unless "overwhelming circumstances prevent this." This suggestion has not been adopted. The language proposed conforms to the provisions of 38 U.S.C. 7102. While the Chairman of the BVA has divided the BVA into three-Member Sections, circumstances might arise in the future which would require an en banc approach in some instances. In addition, as contemplated by 38 U.S.C. 7102(a)(2) and by paragraph (d) of this section, there will inevitably be times when less than three Members are available in an individual Section due to

the absence of a Member of the Section, a vacancy on the Board, or the inability of a Member assigned to a Section to serve.

One commenter charged that the language in paragraph (b), noting that a Chief Member may be redesignated as a Member, was added under the guise of being an editorial change and was an inappropriate provision allowing the "demotion" of "independent decision makers." This revision was not described as an editorial change. It was clearly identified in the notice of proposed rule making. (See 54 FR 34334.) The position of Chief Member of a BVA Section is one which adds administrative tasks, which are entirely separate and apart from decision making in individual cases before the BVA, to the normal duties of a Member of the BVA. It does not carry with it any increase in pay or entitlements. Chief Members, as such, are judged on their administrative skills and not on their decision making record. 38 U.S.C. 7102(a)(1) provides that the Chairman may designate the Chief Member of a BVA Section. This regulation merely makes clear what was implicit in that authority, that one individual may be designated in place of another when appropriate. Such a reassignment does not involve any loss of pay or entitlements and does not constitute a "demotion."

One commenter voiced the opinion that 38 U.S.C. 7102 and 7103 require that a minimum of two Members participate in an appeal and that the use of the word "Members" at the end of paragraph (d) is therefore contrary to law. VA does not agree with this statutory interpretation. While it would be unusual to have two vacancies, absences, or Members who were unable to serve in an individual section at any given time, VA is of the opinion that proceeding with one Member is permissible under 38 U.S.C. 7102(a)(2)(A)(iii) under such circumstances. The use of the plural does not represent a change from the prior regulation on which this paragraph was based.

The same commenter also objected to the use of the phrases "other good cause" and "participate effectively" in paragraph (d), asserting that these provisions are contrary to the provisions of 38 U.S.C. 7102(a)(2)(A) and violate a "claimant's" rights to an unbiased BVA panel. VA does not agree with this statutory interpretation, nor does this amendment bring about any impairment of an appellant's rights. VA does agree, however, that the terms objected to are somewhat vague and they have been removed. In their place, a cross-reference to the more specific standards set out in § 19.12 has been added. Editorial changes have also been made in paragraph 19.3(a) to make it clearer that the Deputy Vice Chairmen are chosen from Members of the Board. With these changes, the amendment to § 19.3 is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 19.4. This amendment is adopted as proposed.

Three comments were received concerning § 19.5. Each commenter noted that this section, which lists the criteria governing the disposition of appeals by the BVA, omitted a reference to decisions of the United States Court of Veterans Appeals (COVA). VA is of the opinion that no such reference is necessary. VA, of course, recognizes that the BVA will be bound by court decisions in some cases.

Proposed § 19.6 has been withdrawn and this section number is reserved. This paragraph concerned the composition of Board of Veterans' Appeals hearing panels, and it is being withdrawn because it was more restrictive than necessary regarding the composition of hearing panels. Two comments were received, neither of which relates to the reason for the withdrawal of this paragraph.

One comment was received on § 19.7. This commenter suggested that the phrase "and upon consideration of all evidence and material of record and applicable provisions of law and regulations," found in 38 U.S.C. 7104(a), be added to the closing sentence of paragraph (a). This suggestion has not been adopted. This paragraph already provides that decisions of the BVA are based upon the entire record. The "entire record" necessarily includes "all evidence and material of record." Governing criteria, such as the law and regulations, are the subject of § 19.5. Adding the suggested phrase would be redundant.

VA is withdrawing proposed paragraph 19.7(b). That paragraph suggested (in part) that issues on appeal could be disposed of by remand or by vacating a prior decision of the Board with respect to the issues. That was not accurate. A remand serves to direct further development prior to the appellate disposition of the issues. It does not "dispose" of an issue on appeal. Neither does vacating a prior Board decision dispose of an issue. When a prior decision is vacated, it is normally followed by a new decision which disposes of the issue.

Due to the withdrawal of proposed paragraph 19.7(b), proposed paragraph 19.7(c) has been redesignated as 19.7(b).

With these changes, the amendment is adopted.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.8 and 19.9. Information has been added to § 19.8 to make it clearer that BVA decisions in contested claims which are provided to the contesting claimants will include only information pertinent to the contested issues. With this addition, these amendments are adopted as proposed.

Proposed § 19.10 has been withdrawn and this section number is reserved. The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on August 27, 1990, which concluded, in essence, that statutory changes brought about by the Veterans' Judicial Review Act (Pub. L. 100–687) had the effect of eliminating "obvious error" as the standard for review by a reconsideration Section after a motion for reconsideration has been granted. (See O.G.C. Precedent Opinion 89–90, 56 FR 1225.) This change also eliminated the principal basis for proposed § 19.10 which, in most cases, limited the evidence which could be considered by a reconsideration Section to that which was of record at the time that the decision being reconsidered was rendered.

One comment was received regarding § 19.11. Proposed paragraph (c) provided that when a traveling BVA Section is expanded to address the reconsideration of a prior BVA decision involving radiation, Agent Orange, or asbestos exposure, the additional Members of the expanded Section will include Members specializing in those issues. The commenter suggested that this requirement for Members specializing in particular issues be expanded to include post-traumatic stress disorder and "complex medical causation issues such as the dates of inception of a veteran's cancer or other disease."

This suggestion has been adopted in part. Post-traumatic stress disorder has been added, as suggested. Familiarity with this area is helpful in ensuring complete development of the appellate record. Material regarding medical causation issues has not been added. Medical causation issues must be decided on the basis of the evidence of record (see *Colvin* v. *Derwinski*, U.S. Vet. App. No. 90–196 (Mar. 8, 1991)). In cases of extraordinary complexity, Members have the option of seeking the

opinion of an independent medical specialist. (See § 20.901, infra.)

Section 19.11, as proposed, continued the long-existing practice of allowing a three-Member BVA Section to hear cases before the BVA on reconsideration when none of the Members who participated in the original decision is available. 38 U.S.C. 7103(b) now requires that all reconsideration actions be heard "by an expanded section of the Board." The references to three-Member Sections have therefore been withdrawn.

An editorial revision has been made to change the word "panel" to "Section" in the section heading and in the text of this section when the reference is to a reconsideration Section. This change has been made so that the amendment will parallel the language which appears in 38 U.S.C. 7103(b).

With these revisions, the proposed amendment is adopted.

Two comments were received concerning proposed section § 19.12. Essentially, the commenters feel that paragraph (c) gives the Chairman too much authority over other Members of the BVA, is beyond statutory authority, and should be removed. VA does not agree. This paragraph allows the Chairman to disqualify a Member of the Board from participating in a particular appeal if the Member gives the appearance of bias, has participated in a prior administrative appeal in the same case on the same issue (and who might naturally tend to be biased in favor of his or her prior decision), or is unable or unwilling to act in the case. VA believes that a procedure for Member disqualification under these circumstances is lawful and is essential. Impartiality is basic to an equitable appellate process. (See, for example, Canons 2 "A Judge should avoid impropriety and the appearance of impropriety in all his activities" and 3 "A Judge should perform the duties of his office impartially and diligently" of the ABA Code of Judicial Conduct.) BVA decisions are to be made on the basis of "the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation." (38 U.S.C. 7104(a)). They are not to be made on the basis of personal prejudice. 38 U.S.C. 7102 provides options to the Chairman, including substitution of another Member, when a Member of a BVA Section is unable to serve. VA is of the opinion that a Member who is biased or who is unwilling to serve in a particular case has demonstrated an inability to serve within the meaning of this statutory provision. VA does feel that 38 U.S.C. 7104 should be included in the statutory authority cited, however, and this authority has been added in the interest of clarity. With this addition, the amendment is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 19.13. The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on May 17, 1990, which had the effect of invalidating the "administrative allowance" procedures of the BVA both in its current Rules of Practice and in these proposed regulations. (See O.G.C. Precedent Opinion 11–90, 55 FR 27756.) Such opinions are binding upon the BVA. (See 38 U.S.C. 7104(c).) Accordingly, all references to those procedures have been withdrawn from these proposed amendments. The material withdrawn includes proposed paragraph 19.13(b). Proposed paragraph 19.13(c) has been redesignated as 19.13(b). With these changes, this proposed amendment is adopted.

Proposed § 19.14 has been withdrawn. This proposed regulation dealt with the manner in which written decisions of the BVA should be prepared when the case involves a prior rating determination by the agency of original jurisdiction which has become final due to the failure to file a timely appeal to the BVA. Decisions by COVA, issued after this regulation was published in proposed form, have altered the BVA's traditional approach to prior "final" adjudicative actions. (E.g., see *Manio* v. *Derwinski*, U.S. Vet. App. No. 90–86 (Feb. 15, 1991); *Colvin* v. *Derwinski*, U.S. Vet. App. No. 90–196 (March 8, 1991); and *Smith* v. *Derwinski*, U.S. Vet. App. No. 89–13 (March 15, 1991).) The proposed regulation was not in complete accord with these decisions and COVA's opinions provide sufficient guidance concerning BVA decision preparation in this area.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.15 and 19.25. Proposed § 19.15 has been redesignated as § 19.14 in view of the withdrawal of proposed § 19.14. The reference to proposed § 19.6, which has been withdrawn, has been deleted. With these revisions, these amendments are adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment to § 19.26. However, this section has been revised in response to comments offered in connection with § 20.201. See the discussion concerning § 20.201, infra, for information concerning this change. The amendment, as revised, is adopted.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.27 and 19.28. These amendments are adopted as proposed.

Two comments were received concerning § 19.29.

One commenter suggested that this section be modified to require a discussion of applicable COVA case law and of any applicable precedent opinions of the General Counsel of the Department of Veterans Affairs in the Statement of the Case as an aid to unrepresented appellants. While VA appreciates the concern which motivated this suggestion, it has not been adopted. This regulation, and the statute upon which it is based, already requires that the Statement of the Case include the reasons for each determination of the agency of original jurisdiction with respect to which disagreement has been expressed. This would include decisions by courts of competent jurisdiction and opinions by the General Counsel when they are applicable.

The second commenter suggested that the phrase "and a discussion of how such laws and regulations affect the determination" be deleted from paragraph (b), contending that the phrase "would constitute a repetition of information already required by subparagraph (c)." This suggestion has not been adopted. The language in question is a direct quotation of language added to 38 U.S.C. 7105(d)(1) by Public Law 100–687. The language does not duplicate the language in paragraph (c). The new statutory language appears to require a discussion of why various statutes and regulations are applicable to a particular case while paragraph (c) requires a discussion of why a particular decision was made. This decision could be (and often is) on a purely factual basis as opposed to a technical legal basis. While there can be some overlap, the requirements of the two paragraphs are not interchangeable.

This amendment is adopted as proposed.

One comment was offered concerning § 19.30. The commenter suggested, in essence, that VA require that documents provided to representatives be sent by mail and that using a "drop-box," as is done at some VA Regional Offices, be forbidden. It was alleged that the "drop-box" service was not effective, but no explanation of why this is the case was given. This suggestion has not been adopted and the amendment is adopted as proposed. This delivery control is not proper subject matter for these regulations. Further, VA is not aware of any special problems with "drop-box" service, which is more expeditious than

mail delivery and which is a relatively convenient means of document delivery for both VA and representatives. It is suggested that any problem with document delivery at any particular field office be brought to the attention of the director of that office so that corrective action may be taken.

Three comments were received on § 19.31. The current equivalent regulation (38 CFR 19.122) provides, in part, that a Supplemental Statement of the Case is required when additional pertinent evidence is received and that a Supplemental Statement of the Case is not required following a hearing before field personnel when no additional pertinent evidence is received. The amended regulation makes it clear that the evidence referred to includes testimony concerning relevant facts or expert opinion, as well as documentary evidence, but that argument is not evidence.

Two commenters suggested that a Supplemental Statement of the Case be required to answer arguments advanced at a hearing held by the agency of original jurisdiction. VA does not believe that this further requirement is necessary or desirable. The purpose of Statements and Supplemental Statements of the Case is to provide appellants with the data which they need, but may not have, to prepare their appeal to the BVA—a summary of the pertinent evidence, information concerning pertinent laws and regulations, and the decision of each issue and a summary of the reasons for each decision. (38 U.S.C. 7105(d)(1)). They are not appellate decisions. Addressing arguments raised by appellants is the function of the appellate decision. The BVA is not bound by an agency of original jurisdiction's position with respect to arguments advanced by appellants and their representatives.

The third commenter asserted that language should be added to more clearly define the difference between testimony and argument, using as an example a situation in which a veteran might regard his or her own statement of facts concerning the symptomatology associated with his or her disability as testimony while a hearing officer "or other responsible person" might regard the same statement as argument. This suggestion has not been adopted. While there may be certain gray areas, these terms are relatively well understood. It is impossible to anticipate every variation which may arise. Disputes concerning what is testimonial evidence and what is argument are best resolved on a case by case basis. In the example given, the veteran would certainly be correct and the hearing officer would be in error. A veteran's oral description of his or her symptoms in a case in which the nature or severity of a disability is at issue would very clearly be "testimony concerning the relevant facts" in the terms used by the amended regulation. Statements of fact made by appellants and witnesses are evidence which must be weighed by the decision maker.

While these comments have been considered, § 19.31 is adopted as proposed.

One comment was submitted concerning § 19.32. This commenter suggested that the word "response" in the second sentence be changed to "Substantive Appeal." VA agrees that this would be preferable. This section is adopted, with that change.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.33 and 19.34. These amendments are adopted as proposed.

One comment was received on § 19.35. The commenter asked that language be included to require that the issues listed in the appeal certification (VA Form 1–8) be the same as the issues covered in the Statement of the Case and any Supplemental Statements of the Case. That is normally the correct practice. Nevertheless, this suggestion has not been adopted. Completion of VA Form 1–8 is accomplished for administrative purposes. Primarily, it serves as a last-minute appeal processing check list for use by VA field facilities prior to transfer of the appeal to the BVA. The appeal certification does not have any effect on the BVA's jurisdiction. Details of how the VA Form 1–8 is completed are best left to VA administrative manuals. For the same reason, other details concerning completion of the form have been withdrawn and the language of the section has been simplified. As simplified, the amendment is adopted.

Two comments were received concerning § 19.36.

One commenter suggested that the notice of certification of an appeal to the BVA include notification as to the issues being certified. VA does not believe that that is necessary. Appellants and their representatives are informed of the issues considered to be in an appellate status through the Statement and Supplemental Statements of the Case. The appeal certification primarily functions as a check list for the agency of original jurisdiction to insure that all appeal processing procedures have been completed prior to the transfer of the case to the BVA. The certification does not serve to confer jurisdiction on the BVA with respect to a particular issue. The second commenter offered the same comment on this section as was offered on § 19.30 concerning the use of "drop-boxes" to deliver documents to representatives. The same response applies.

Proposed § 19.36 was essentially a duplicate of a proposed amendment of 38 CFR 19.174(a) which had been published for public comment on July 6, 1989. (54 FR 28445) The final version of 38 CFR 19.174 was published on May 15, 1990. (55 FR 20144) Several changes arising out of comments received were incorporated into the final rule. These included a requirement that appellants and their representatives be notified of various restrictions concerning changes in representation, requests for personal hearings, and the submission of additional evidence after an appeal has been certified to the BVA. A conforming revision has been made to § 19.36 and, with this revision, the amendment is adopted.

One comment was received on § 19.37. This commenter felt that paragraph (a) should be revised to delete the language providing that a Supplemental Statement of the Case need not be issued when duplicate evidence is received which has already been discussed in a Statement of the Case or Supplemental Statement of the Case. VA finds no merit in this suggestion. Appellants and representatives often submit duplicate copies of documents which they have submitted before or copies of records which they obtained from VA in the first place. No useful purpose is served by again discussing evidence which has already been discussed.

Two comments were received concerning § 19.38. The proposed section provides that development completed by the agency of original jurisdiction pursuant to a remand from the BVA should be reviewed by that agency to determine if that development shows that the benefit sought on appeal should be allowed. One commenter suggested that a review of the entire record be required and felt that the proposed section seemed to indicate that the review would be limited to only the information developed as a result of the remand. It is certainly not VA's intent that the post-remand development be reviewed in a vacuum. Changes have been made to make it clear that the review is to take into consideration the evidence which was previously of record. The other commenter noted that the 30-day period referenced in this section is in conflict with the provisions

of § 20.302(c). The commenter is correct and this error has been corrected. With these changes, the amendment is adopted.

No comments, suggestions, or objections were received regarding the amendments to §§ 19.50 through 19.53, 19.75 through 19.77, and 19.100 through 19.102. Material has been added to §§ 19.101 and 19.102 to make it clearer that information which is provided to the contesting claimants in contested claims is limited to information pertinent to the contested issues. With this addition, these amendments are adopted as proposed.

One commenter did suggest that VA's substantive appeal form (VA Form 1–9) be annotated to show that requests for hearings before traveling sections of the BVA should be submitted to the applicable VA field office, rather than to the BVA, as required by § 19.75. This form was extensively revised in October 1989 and now includes this information.

A commenter suggested that a cross-reference from § 19.76 to § 20.704 be added to appendix A to part 19. VA agrees that this would be helpful and this cross-reference has been added. References to proposed §§ 19.13(b) and 19.14, which have been withdrawn, have been removed. The appendix is adopted, with these revisions.

One comment was received on § 20.1. It was suggested that the introductory clause "In accordance with the agency's policy of providing assistance to the appellant," be restored to what is now paragraph (b). The operative language of the prior section "These rules are to be construed to secure a just and speedy decision in every appeal" has been retained. The omitted introductory clause adds nothing of substance. This amendment is adopted as proposed.

One comment was received regarding § 20.2. This commenter alleged that this section (which provides that the Chairman may prescribe procedures consistent with the provisions of title 38, United States Code, and the BVA's Rules of Practice when a situation arises which is not covered by any existing rule or procedure) removes authority from Chief Members which they previously had, that it is contrary to the intent of Public Law 100–687, and that it is inefficient inasmuch as Board Sections will be forced to delay processing of a case while it is routed through the Chairman's office. VA does not agree with these remarks and the amendment is adopted as proposed. This authority has not been removed from Chief Members. Section 20.102, paragraph (c), extends this authority to the Vice Chairman; the Deputy Vice Chairmen; and, in connection with proceedings assigned to them, to other Members of the Board who have been designated as the Chief (or Acting Chief) Member of a Section or who are acting as the presiding Member of a hearing panel. It should also be borne in mind that the Chairman is, in fact, a Member of the Board (see 38 U.S.C. 7101) and has the same decision making authority as any other Member of the Board—in addition to special authority conferred by law in certain instances (e.g., see 38 U.S.C. 7103). In addition, he or she is the chief administrative officer of the Board in a position not unlike that of the chief judge of an appellate court. It is, of course, impossible to anticipate every procedural contingency when writing Rules of Practice and, from time to time, procedures must be devised to deal with unique situations. Occasions arise when special procedures must be devised in cases which are not yet before a BVA Section or in which Section action has been completed. The requirement that any necessary ad hoc procedure be consistent with existing statutory and regulatory authorities provides protection from abuse.

One comment was received concerning § 20.3. The commenter stated that "legal intern" should be defined as a law student, rather than as a graduate of a law school who has not yet been admitted to the bar, and that the definition of "legal intern" proposed was actually the appropriate definition of "law clerk." The proposed definition of "legal intern" is consistent with BVA practice and with the definition in "Black's Law Dictionary," which defines an intern as "an advanced student or recent graduate in a professional field." (Black's Law Dictionary 732 (5th ed. 1979). A separate definition of "law student" is provided. Inasmuch as these terms are clearly defined in this section, no confusion should result.

"Cemetery" has been added to the list of VA facilities which are included in the definition of "agency of original jurisdiction" as an editorial change. Cemeteries were previously included via the phrase "or other Department of Veterans Affairs facility."

Paragraph 20.3(k), as published, contained typographical errors. In the second sentence, "60 days" should read "90 days" and the reference to § 20.609(g) should have been to § 20.609(i). These errors have been corrected.

With these revisions, § 20.3 is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 20.100. This amendment is adopted as proposed.

Two comments were received on § 20.101. With one exception, both concern the third sentence of paragraph (a), which is similar to language in proposed § 19.5, and both comments are essentially the same as the comments offered concerning § 19.5, supra. The same response applies. One of the commenters also felt that the statement in paragraph (c) that only the Board of Veterans' Appeals will make final decisions with respect to its jurisdiction might mislead readers to believe that the United States Court of Veterans Appeals could not review such a determination. The statement, of course, applies only to determination of BVA jurisdiction within VA. The statement has been modified to reflect that such a determination may be subject to judicial review. With this change, the amendment is adopted.

One comment was offered concerning § 20.102. The commenter indicated that the intent of paragraph (d) was unclear, inasmuch as it appeared to authorize any Member of the BVA to rule on a motion for a subpoena or to quash a subpoena under proposed § 20.711(e) and (f), respectively. VA agrees that clarification is in order. This comment and comments in response to § 20.609(i), infra, bring to light the fact that this proposed regulation did not make it clear that the various authority exercised by BVA Members assigned to BVA Sections is to be exercised in the context of proceedings which have been assigned to them for disposition in accordance with the provisions of 38 U.S.C. 7102(c). Appropriate material has been added to paragraphs (c) and (d) to clarify this aspect of the regulation. While not noted by a commenter, there is one typographical error in paragraph (d). The reference to § 20.609(g) should be to § 20.609(i). This error has been corrected. A reference to proposed § 20.1101, which has been withdrawn, has been removed. The amendment, with the revisions noted, is adopted.

No comments, suggestions, or objections were received regarding the amendment of § 20.200. This amendment is adopted as proposed.

Three comments were received concerning § 20.201.

One commenter noted that this section refers to filing a Notice of Disagreement with an adjudicative determination by an agency of original jurisdiction and suggested that a provision be included specifically addressing appeal of determinations by VA's Veterans Health Administration (VHA)—apparently under the mistaken belief that the term "agency of original jurisdiction" applies only to field

facilities of the Veterans Benefits Administration. When a VHA facility has made the determination being appealed, it is the "agency of original jurisdiction." (See § 20.3(a).)

The commenters raised objection to what are alleged to be unwarranted procedural requirements for Notices of Disagreement, including the use of the word "must" in the second sentence and the requirement that the issues with which disagreement is being expressed be identified. VA does not agree that these provisions are unwarranted. The word "must" to which the objection is raised occurs in the following sentence: "While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review." VA has always been, and will continue to be, liberal in determining what constitutes a Notice of Disagreement. The continuation of this policy is demonstrated by the lack of a requirement for special wording and the use of the phrase "can be reasonably construed." Nevertheless, some indication which reasonable persons can construe as disagreement with a determination by an agency of original jurisdiction and a desire to appeal that determination is at the very heart of what constitutes a Notice of Disagreement. Without such an expression, the communication may be something, but it is not a Notice of Disagreement. Not much is required, but the communication must be recognizable as a Notice of Disagreement.

Important consequences flow from filing a Notice of Disagreement. As provided in 38 U.S.C. 7105(a), appellate review is initiated by a Notice of Disagreement. The Notice of Disagreement is jurisdictional—that is, without a Notice of Disagreement, the BVA does not have jurisdiction over an issue (except as provided in § 19.13). Further, it would not be fair for the BVA to assume jurisdiction over an issue before a claimant, who may still have months remaining before the time to appeal lapses, has completed his or her preparation and is ready to initiate an appeal as to that issue. Thus, it is vital that the BVA be able to tell which issues have been appealed when several determinations have been made which are appealable.

It is not VA's intent to deprive anyone of his or her right to appeal. As one commenter pointed out, a Department of Veterans Benefits operational manual (M21–1, paragraph 18.03b) requires that clarification sufficient to identify the issue being appealed be requested when a Notice of Disagreement is received following a multiple-issue determination and it is not clear which issue, or issues, the claimant desires to appeal. VA strongly supports this policy and, in view of the concerns raised here, has made it applicable throughout VA by adding this requirement to § 19.26 "Action by agency of original jurisdiction on Notice of Disagreement." The BVA may also remand cases for issue clarification when necessary. With this addition, § 20.201 is adopted as proposed.

Three comments were also received concerning § 20.202.

One commenter objected to the requirement that the issues being appealed be identified. VA believes that this requirement is appropriate for the same reasons noted in conjunction with a similar objection to § 20.201. It is also noted that one of the purposes of the current statutory appellate process is to narrow appeals to those issues which an appellant really wants to appeal after the reasons for a determination have been explained to him or her in the Statement of the Case and that 38 U.S.C. 7105(d)(3) provides that the benefits sought on appeal must be clearly identified in the formal appeal.

Two commenters objected to the use of the word "must," rather than "should" in conjunction with the requirement that the Substantive Appeal set out specific argument relating to errors of fact or law made by the agency of original jurisdiction. This objection is well taken in view of the word "should" in the statute on which this provision is based (38 U.S.C. 7105(d)(3)) and this has been corrected.

One commenter stated that "we are very much concerned by the new authority created by this section which would allow the BVA to unilaterally dismiss an appeal which does not allege an error of fact or law." This authority is not new. 38 U.S.C. 7105(d)(5) specifically states that "The Board of Veterans' Appeals may dismiss any appeal which fails to allege specific error of fact or law in the determination being appealed." VA believes that it is appropriate that this fact be brought to the attention of appellants and their representatives in this Rule of Practice. VA also notes that the BVA has been, and will continue to be, very liberal in this area. This Rule of Practice also provides that "The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal * * *" and § 20.203 provides that appellants and representatives will be given notice and an opportunity to contest the matter when the BVA questions the adequacy of the Substantive Appeal.

One commenter objected to a perceived requirement for "the claimant to lay out all specific arguments in the Substantive Appeal," observing that it had previously been sufficient to address issues in general terms and to be more specific in "the presentation to the BVA" (apparently a reference to formal and informal hearing presentations and/or appellate briefs). There is nothing in the proposed amendment which changes the practice described. That is, this amendment neither precludes nor discourages raising additional arguments, or further explaining prior arguments, concerning appealed issues in presentations subsequent to the Substantive Appeal.

This proposed amendment is adopted, with the correction described above.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.203, 20.204, 20.300 and 20.301. These amendments are adopted as proposed.

One comment was received on § 20.302. This commenter feels that the language in paragraph (c) which extends the time to respond to a Supplemental Statement of the Case to 60 days should not be adopted and that the response time should remain at 30 days. As the commenter notes and as was set forth in the notice of proposed rulemaking, the reason for this change is that when new issues are included in a Supplemental Statement of the Case it becomes the Statement of the Case as to the new issues. The law provides that an appellant has 60 days after receiving a Statement of the Case within which to file a Substantive Appeal. (See 38 U.S.C. 7105(d)(3).) The commenter argues that new issues should not be included in Supplemental Statements of the Case. While VA understands that the "purest" procedure might arguably be to require a separate Statement of the Case concerning new issues raised, that is not the procedure used by VA regional offices in some cases. There is nothing legally wrong with consolidating the appeals, provided that the agency of original jurisdiction bears in mind that when a new issue is raised and denied, there must be a Notice of Disagreement with respect to the new issue before it is included in a Statement or Supplemental Statement of the Case. This amendment is adopted as proposed.

The same commenter raised an objection to § 20.303 with the following comment: "Please refer to comments pertaining to the "60-day period" under the preceding paragraph." The

paragraph referred to was the one containing the above objection to § 20.302. Apparently, the objection relates to the reference to a 60-day period for responding to a Supplemental Statement of the Case. The language in this amendment has not been modified for the same reasons noted in the discussion concerning § 20.302. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.304. This amendment is adopted as proposed.

One commenter feels that the presumption in § 20.305 that a document had been postmarked 5 days prior to it's receipt when the actual postmark is not available is too liberal and that a three day period is more appropriate. While VA agrees that this is perhaps liberal, this suggestion has not been adopted. This commenter also noted that mail service is provided on Saturday—in essence suggesting that the exclusion of Saturday in calculating the 5-day period is inappropriate. VA notes that mail service is not provided in all areas on Saturdays. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.306. "Martin Luther King, Jr.'s Birthday" has been changed to "Birthday of Martin Luther King, Jr." and the apostrophe has been removed from "Veterans Day" to conform with 5 U.S.C. 6103. This amendment is adopted with these revisions.

One comment was received concerning § 20.400. The commenter suggested that the fourth sentence be modified by adding the words "by the claimant or the claimant's representative," or similar words, after the word "argument" to make it clear that only the claimant or his or her representative may authorize a merged appeal. While that is already relatively clear from the proposed regulation, the suggested addition is accepted and the proposed amendment is adopted with this addition.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.401 and 20.500. These amendments are adopted as proposed.

One comment was received regarding § 20.501. This commenter, who was also the only commenter on § 20.302, suggested revision of the last two sentences of paragraph (c) "for the same reasons previously eluded (sic) to in comments pertaining to 20.302, as proposed." Presumably, the objection is to the concept of inclusion of new issues in a Supplemental Statement of the Case. For the same reasons outlined in response to the comments concerning § 20.302, this suggestion has not been adopted and the amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.502 through 20.504 and 20.600 through 20.605. Section 20.603(a), as proposed, was slightly more restrictive than 38 CFR 14.629(c) with respect to the documentation required to appoint an attorney-at-law as a representative in VA proceedings. Section 20.603(a) has been revised to make it consistent with 38 CFR 14.629(c). With this revision, these amendments are adopted as proposed.

Two comments were received concerning § 20.606, both addressed to paragraph (e) which notes that permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual. (This authority has also been delegated to the Vice Chairman, the Deputy Vice Chairmen, and Members of the Board. See § 20.102(d).)

One commenter felt that this paragraph "unlawfully" singles out legal interns, law students and paralegals for "an entirely new and separate discipline system for such representatives" and suggested that procedures such as those set out in 38 CFR 14.633(c) (pertaining to termination of recognition of representatives) be adopted. The second commenter felt that this paragraph was based upon an assumption that law students are more prone to engage in unprofessional conduct than are other representatives and cited the care used by law students utilized by the commenting organization in preparation for BVA hearings and the training which the commenting organization gives to law students participating in such hearings. Fear was expressed that an appellant's case would be prejudiced should a law student be disqualified during the course of a hearing and a supervising attorney, who had not established an equally close working relationship with the appellant, be required to complete the hearing. Fear was also expressed that various pre-hearing and hearing requests by students which might be inconvenient to the BVA's administrative staff and Board Members could be deemed "unprofessional" and that irritation with a "representative's" persistence might therefore cut off the representative's ability to properly develop the record.

The BVA has permitted law students, paralegals, and legal interns to participate in hearings (with professional supervision by attorneys-at-law) for a number of years. VA makes no assumption that law students are especially prone to unprofessional conduct and recognizes that most of these individuals are sincere and dedicated. It also recognizes the valuable experience which such participation provides in the training of law students. Unless independently qualified, however, these individuals are not representatives. They may be future representatives in training, but they do not have the same status as representatives and they are not subject to the disciplinary procedures described in 38 CFR 14.633. Rather, they are permitted to assist an attorney-at-law who is the accredited representative as a courtesy to that representative. It is the supervising attorney-at-law who is responsible for the prosecution of the appeal.

While VA recognizes the valuable contribution which BVA experience may provide in the training of paralegals, law students, and interns and the valuable service which these individuals provide to appellants in most instances, the Board's primary responsibility is to insure that justice is done in each individual case and that appellants are not ill-served by inexperienced individuals in training.

The BVA encourages zeal in the prosecution of appeals. Thorough representation is very helpful to the BVA, as well as to appellants, in ensuring that all facts and applicable legal theories are brought to light so that justice may be served in each individual appeal. Nevertheless, BVA Board Members have a right to expect that they will be treated with professionalism in the course of appellate presentations. Further, training in professional responsibility is no less a proper part of a law students' education than is training in substantive and procedural law. The American Bar Association's "Model Rules of Professional Conduct" provide, in part, that a lawyer shall not engage in conduct intended to disrupt a tribunal. (Rule 3.5) The following comment, which follows that provision, is germane:

> The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient

firmness no less effectively than by belligerence or theatrics.

A mechanism such as that in paragraph (e) is necessary for the protection of the appellate process in those few cases where the privilege extended to these individuals is abused. Considering the status of these individuals, the elaborate procedures provided for the suspension or debarment of a representative set out in 38 CFR 14.633 are not appropriate. VA has no reason to believe that the authority described in this paragraph will be abused by any Member of the BVA. Should such a situation arise, the issue may be appropriately raised on appeal. If the supervising attorney performs his or her function appropriately and monitors the professionalism of the law student, legal intern, or paralegal who is assisting him or her at an appellate hearing; there will be no cause for excluding such an assistant during the course of a hearing. The supervising attorney is the representative of record. He or she is responsible for being thoroughly prepared for hearings in order, at the very least, to properly supervise his or her assistants. He or she should, and must, be prepared to take charge of any aspect of a hearing when required. This amendment is adopted as proposed.

Only one comment was received concerning § 20.607. The commenter voiced support for the provisions of this section, but noted that it conflicts with limitations imposed by § 20.1304 concerning a request for a change in representation following certification of an appeal and transfer of the appellate record to the BVA. A reference to this limitation has been added and, with this addition, the proposed amendment is adopted.

Two comments were received regarding § 20.608. Both deal with the restriction in paragraph (b) on a representative's right to withdraw from a case after an appeal has been certified to the BVA for review.

One commenter felt that there should be no restriction and expressed particular concern about a situation in which there might be an antagonistic relationship between a representative and appellant or disagreement between the representative and appellant on how to proceed in a particular case. VA feels that a limited restriction on the right of a representative to withdraw at the appellate level is justified. Unfortunately, there have been abuses in this area. For example, there have been cases in which representatives have left appellants unrepresented minutes before a hearing was to begin because they had not taken the trouble to evaluate the case prior to the hearing or did not choose to continue with a case which they felt might not enhance their record of success. VA considers an undertaking to represent an appellant to be a very serious matter. The proposed section already provides that withdrawal will be permitted when good cause is shown and that good cause includes "factors which make the continuation of representation impractical or impossible." Clearly, the two situations mentioned by the commenter would fall into this category.

The second commenter noted that there could be situations in which a representative could be compelled to represent an appellant whom he or she had never agreed to represent, inasmuch as designations of representation can be filed by appellants without the prior agreement of the representative. This commenter suggested that, if the proposal were adopted, it should contain an exception for such cases. Concern was also expressed about placing representatives in a situation in which they might be forced to continue representation in situations where continued representation might be in violation of the "Code of Professional Responsibility." In this regard, it was suggested that "unethical" be added to "impractical" and "impossible" at the close of the second sentence of paragraph (b) and that representatives not be required to explain how or why continued representation would be unethical. VA agrees that these concerns are valid. The paragraph has been modified to provide that permission to withdraw is not required unless a representative has agreed to act in the case and the word "unethical" has been added as suggested. Language has also been added to make it clear that motions to withdraw should not include information which it would be unethical for the representative to reveal.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

The citation of authority has been expanded to include 38 U.S.C. 7105(a).

With these modifications, the proposed amendment is adopted.

Three comments were received concerning § 20.609.

Paragraph (f) of this section states that fees charged by attorneys-at-law and agents in proceedings before VA will be presumed to be reasonable if they total no more than 20 percent of any past-due benefits awarded. One commenter asserted that this provision was contrary to law, inasmuch as 38 U.S.C. 5904(d)(1) limited the 20-percent test to contingent-fee cases, while a reasonableness test applies to other types of fee arrangements. In addition, the commenter argued that this provision would induce representatives to tailor their fees to approximate 20 percent even though they might be "grossly disproportionate" to the work required, that Congress meant the 20-percent figure to be a ceiling and not the norm, and that the presumption transferred the burden of proof from the representative to the claimant/appellant. With regard to the latter, concern was expressed about an unrepresented individual meeting this burden.

VA does not agree that this provision is unlawful and finds no evidence that it is contrary to the intent of Congress. 38 U.S.C. 5904(c)(2) provides, in essence, that the BVA is charged with determining what fees are reasonable. This presumption serves to announce that the BVA considers fees meeting the 20-percent test to be reasonable unless the contrary is shown. VA believes that it may be construed from the provisions of 38 U.S.C. 5904(d)(1) that it is the sense of the Congress that fees of 20 percent are not unreasonable. It is true that this presumption serves to shift the burden of proof, but VA does not feel that this transfer is unwarranted. Fees of 20 percent would be relatively modest in most cases. Attorneys' fees in many types of civil actions, for example, typically run to a greater amount. At least as to contingent fees, fees of 25 percent of past-due benefits have apparently become the norm in Social Security cases. (Department of Health & Human Services, Social Security Administration, Office of Hearings and Appeals; "Report to Congress, Attorney Fees Under Title II of the Social Security Act" 2 (1988).) Further, most cases allowed by the BVA do not result in large awards of past-due benefits.

VA has no reason to believe that abuse by representatives who would charge "grossly disproportionate" fees will arise except in unusual cases. Should there be any such abuse, this section and 38 U.S.C. 5904(c)(2) provide for review by the BVA to protect the claimant/appellant. As to unrepresented individuals, the BVA has not and will not penalize legally unsophisticated appellants—nor will it tolerate "grossly disproportionate" fees, even though they

may meet the 20-percent test. Obviously, if fees of 20-percent were grossly disproportionate to the amount of work done, the presumption of reasonableness would be overcome.

The same commenter urged that this regulation include a provision for notifying appellants of their right to file a motion for review of fee agreements under paragraph (i), possibly by inclusion of notice in the form used to designate attorneys and agents as representatives (VA Form 2–22a) and by a requirement that it be included in privately drawn designations of a representative which does not use the form. VA does not currently believe that the need for such notice is so strong as to justify the burden of imposing a regulatory duty of proving that such notice has been given to appellants by agents and attorneys who do not use the form mentioned.

The second commenter voiced disagreement with the indication in paragraph (c)(1) that a condition precedent to the charging of fees by attorneys-at-law and agents is a final BVA decision "with respect to the issue, or issues, involved." The commenter argues that the only criteria should be that there was a prior decision, not that the exact issue or issues were decided in that decision, and that this provision is contrary to the intent of Congress. VA does not find that this objection is well-founded. It was clearly not the intent of Congress that a BVA decision on any subject in the case of a particular veteran would open the door to fees by attorneys-at-law and agents with respect to every matter which might ever arise in the future. The statutory requirement that there be a final decision in the case makes little sense unless the intent is that the decision has been on point. The remarks of the Honorable Alan Cranston, United States Senate, in discussing Public Law 100–687 are instructive. These remarks include the following:

> Let me be clear—I do not believe that most veterans with claims before the VA would be well advised to seek the assistance of an attorney. Certainly, were I asked, my first advice to a veteran with such a claim would be to contact a veterans' service officer. But the existence of the valuable, free resource of representation before the VA by veterans' service officers in claims adjudication is not a reason for precluding a veteran from seeking to obtain the services of an attorney at the end of the internal VA process if the veteran wishes to do so.
>
> The compromise agreement before us today prohibits attorneys fees until after the BVA makes its first final decision, thus contemplating that the current practice of veterans being assisted by skilled veterans' service officers throughout the VA and initial BVA administrative processes would continue to operate exactly as it does now.

(134 Cong. Rec. S 16646 (daily ed. Oct. 18, 1988).)

Essentially, the idea is that attorneys and agents will not become involved in claims for particular benefits from VA on a fee basis until after the claim has been denied at the VA field facility level and, after an appeal, the BVA has had an opportunity to rule on the merits of the particular claim—in short, until after the normal administrative procedures have run their course. For example, the fact that there had been a recent BVA decision on the issue of entitlement to service connection for one disability would permit a fee agreement with respect to that issue (assuming that the other criteria were met), but it would not furnish a basis for a fee agreement on another entirely separate issue (e.g., entitlement to an increased evaluation for another disability) on which the BVA had not yet ruled. It should be noted that the term "issue" in the context of this regulation means the principal issue (e.g., entitlement to service connection for a particular disability). It is not the intent of this regulation to restrict fees for services performed in conjunction with the disposition of the collateral issues which must be addressed in order to reach a decision on the principal issue.

The same commenter felt that the words "applicable Board of Veterans' Appeals decision" in paragraph (c)(2) are confusing and objected that the right to obtain an attorney on a fee basis was unfairly restricted if the intent was to refer back to paragraph (c)(1). (While the comment is not clear in this regard, this objection is apparently on the same basis as the objection to paragraph (c)(1).)

The intent was, indeed, to refer back to paragraph (c)(1). Paragraphs (c)(1) through (c)(3) constitute an interconnected list of criteria which must be met. To remove any doubt, however, the language in paragraphs (c)(2) and (c)(3) has been amended to conform to the language in paragraph (c)(1). With respect to the appropriateness of the language, the comments concerning paragraph (c)(1) apply.

Also with respect to paragraph (c)(2), this commenter argues that there should be no requirement that the Notice of Disagreement received on or after November 18, 1988, must precede the BVA decision with respect to the issue, or issues, involved. Essentially, the commenter feels that the statute (38 U.S.C. 5904(c)(1)), read together with section 403 of Public Law 100–687, is satisfied if there is a final BVA decision and if there is a Notice of Disagreement filed on or after November 18, 1988, even though the decision predated the Notice of Disagreement. For example, the commenter argues that if there is a final BVA decision following a pre-November 18, 1988, Notice of Disagreement denying a benefit, the claim is reopened and again denied at the agency of original jurisdiction level, and a Notice of Disagreement is filed after November 18, 1988, on the reopened claim, there should be an immediate right to enter into a fee agreement rather than a necessity to await the BVA decision on the reopened claim.

VA has not found material in the legislative history which shows that this particular point was specifically considered in the drafting of Public Law 100–687. However, VA is of the opinion that the construction in this proposed amendment is the one which is the most logical. It appears that the intent with respect to the effective date for the allowance of fee agreements was that there would be a clear line of demarcation centered on the date of enactment of Public Law 100–687 (November 18, 1988) with an orderly progression of subsequent events, culminating in a BVA decision, before fee agreements are permitted. Independent analysts have also apparently arrived at the same conclusion. (e.g., see Stichman, "The Veterans' Judicial Review Act of 1988: Congress Introduces Courts and Attorneys to Veterans' Benefits proceedings," 41 Ad. L. Rev. 365 at 387, 388 (1989)).

Once the BVA denies an appeal, its decision is final and conclusive aside from the right to appeal to the United States Court of Veterans Appeals, or another Federal court, under some circumstances and a possible motion for reconsideration. (38 U.S.C. 7103(a)) When an appeal is denied by the Board, it may not thereafter be reopened and allowed on the same factual basis, but only on the basis of new and material evidence. (38 U.S.C. 5108 and 7104(b)) Thus, a reopened claim, even with a Notice of Disagreement filed on or after November 18, 1988, has little legal relationship to a prior denied appeal. The earlier appeal is, in essence, a separate case. Inasmuch as 38 U.S.C. 5904(c) bars payment of a fee for "services provided before the date on which the Board of Veterans' Appeals first makes a final decision in the case," VA believes that fees are payable only for service provided subsequent to a final BVA decision following upon a

Notice of Disagreement filed on or after November 18, 1988.

Moreover, Congress contemplated that the operative BVA decision, for the purposes of Public Law 100–687, would follow rather than precede the Notice of Disagreement. Regarding the effective date provisions, for example, Senator Cranston noted the following:

> Given the fact that it currently takes on the average over 355 days from the issuance of the statement of the case—the step after the filing of the notice of disagreement—to the entry of a final BVA decision, the new court should have sufficient time before its effective date on September 1, 1989, in which to become fully operational before it receives its first significant number of cases.
>
> (134 Cong. Rec. S 16650 (daily ed. Oct. 18, 1988))

Further, the judicial-review provisions and the attorney-fee provisions were enacted together, as an organic whole. The attorney-fee provisions were added primarily to assist veterans in retaining counsel for assistance in appealing BVA decisions to the United States Court of Veterans Appeals. Senator Cranston emphasized that veterans should be assisted by veterans service officers throughout VA field facility and initial BVA processes, concluding that the attorney-fee provisions would enable a veteran, "once he or she has received an initial BVA decision and has sought an attorney's assistance to appeal that decision, * * * to seek further BVA review with the assistance of counsel before going to court." (134 Cong. Rec. S 16646 (daily ed. Oct. 18, 1988)) To the extent a veteran has filed a Notice of Disagreement in a reopened claim, but has not received a BVA decision thereon, an appeal to the court would be premature. Thus, the need for counsel envisioned by Congress (i.e., to assist in an appeal to the COVA) has not arisen.

In an analogous situation, Congress expressed its desire to bar payment of fees where counsel is not retained within one year of the final BVA decision. Senator Cranston explained the effect of this provision in the context of stale appeals as follows:

> This provision is not intended to limit a claimant from changing attorneys once an appeals process has begun, but rather to address the possibility of a claimant receiving a final BVA decision waiting a number of years without any action, and then retaining an attorney to request a reopening and pursuit of the claim at the regional office level. In such a case, no fee could be paid to the attorney until after a new final decision.
>
> (134 Cong. Rec. S 16647 (daily ed. Oct. 18, 1988))

VA believes that the same analysis may be applied where there is a disjunction between a pre-Public Law 100–687 decision and a post-Public Law 100–687 Notice of Disagreement. There is no compelling reason to allow the payment of fees before a veteran has exhausted administrative procedures in a reopened claim and, as Senator Cranston's remarks suggest, there is every reason to bar the payment of fees in stale appeals.

Paragraph (b) of § 20.609 points out that agents and attorneys-at-law may receive fees, but that other representatives may not. This commenter also suggested that paragraph (b) be amended to specify when agents and attorneys-at-law who are also accredited representatives of recognized organizations may receive fees. Explanatory language has been added, as suggested. Only one representative may be recognized at any given time in the prosecution of a particular claim. (See § 20.601 and 38 U.S.C. 7105(b)(2).) An attorney-at-law or agent could also be an accredited representative of a recognized service organization. (See 38 CFR 14.628, "Recognition of organizations," and 14.629 "Requirements for accreditation of representatives, agents, and attorneys.") Whether he or she may charge fees for services performed in a particular case will depend upon the capacity in which he or she is acting at the time. If the organization has been designated as representative and he or she is acting in his or her capacity as an accredited representative of a recognized organization, it is the organization which is the representative in the case, not the accredited representative of the organization. Recognized organizations may not receive fees and the fact that the particular accredited representative who is working on the case for the organization may also happen to be an attorney-at-law or agent does not alter that fact. If he or she has been appropriately designated and is acting in his or her own capacity as an attorney-at-law or agent as the designated representative, then fees may be charged if the other criteria are also met. (Also see proposed § 20.603(b) concerning attorneys employed by recognized organizations.)

The third commenter suggested that the list of factors to be considered in determining whether fees charged by attorneys-at-law and agents are reasonable contained in paragraph (e) should include "the delay in payment" and "the contingent nature of the representation." VA assumes that the reference to "the contingent nature of the representation" is actually a reference to the contingent nature of payment in contingent fee cases. On that assumption, this part of the suggestion has been adopted. The suggestion concerning including delay in payment as an element for consideration has not been adopted. Potential difficulty in collecting fees from clients exists in every case. If the concern here is about the fact that payment must await the result in contingent fee cases, that would be part of the justification for higher fees in contingent fee cases and is contemplated by the inclusion of consideration of whether the payment of fees is contingent upon achieving a favorable result.

This commenter felt that paragraph (f), which provides that fees which total no more than 20 percent of any past-due benefits awarded will be presumed to be reasonable, should be "clarified" to show that fees over 20 percent would not be presumed to be unreasonable. VA believes that it is obvious that that would not be a reasonable construction of paragraph (f) and that no further clarification is necessary. (See the discussion concerning the first commenter's remarks regarding this paragraph.)

This commenter argues that paragraph (i) should provide that motions for the review of fee agreements should be ruled on by "the Board," rather than by the Chairman, citing the language in the section of Public Law 100–687 which has been codified as 38 U.S.C. 5904 and arguing that Board Members are in the best position to judge the quality and quantity of an attorney's work on a case. This suggestion has not been adopted.

Such motions are in fact reviewable by any of the Members of the Board when the motion is properly before them. (See § 20.102(d).) VA regrets any confusion which may have been caused in this regard by the typographical error which resulted in an erroneous reference to § 20.609(g), rather than § 20.609(i), in § 20.102(d).

Secondly, this comment seems to be based on the erroneous assumption that the Chairman is not a Member of the Board with decision-making authority at least equal to that of any other Member. Clearly, that is not the case. (See, for example, 38 U.S.C. 7101(b).)

Next, from an administrative standpoint, choosing which Members of the Board will dispose of motions is one of the Chairman's duties. Sections of the Board dispose of motions which are before them in connection with proceeding which have been specifically assigned to them by the Chairman. (See 38 U.S.C. 7102(c).)

Finally, VA agrees that Members of Board Sections will be in a good

position to rule on motions concerning fee agreements in matters in which they have been personally involved. It is contemplated that such Members will rule on motions concerning fee agreements which arise during the course of appeals or other proceedings which have been assigned to them in accordance with 38 U.S.C. 7102(c). (As a result of these comments, material has been added to § 20.102 to make this clearer.) However, motions concerning the reasonableness of fee agreements (as well as other motions) do not always arise in the context of appeals before Sections of the Board for disposition. Essentially, 38 U.S.C. 5904 charges the BVA with monitoring the reasonableness of fee agreements concerning cases brought throughout the Department regardless of whether they are in the context of an appeal. For example, an attorney-at-law may be hired to represent a claimant at the field level in a reopened claim which follows a recent BVA decision. The representative may be successful in the prosecution of the reopened claim and the case will never come before the BVA on appeal. Nevertheless the claimant could file a motion with the BVA for review of the reasonableness of the attorney's fees. Along the same lines, 38 U.S.C. 5904(c)(2) and these rules provide for filing a copy of any fee agreement with the BVA and that the Board may review agreements for reasonableness on its own motion. It seems clear that the BVA has the responsibility under this statute to conduct at least a preliminary screening of agreements filed with it to guard against the abuse of veterans and their survivors and dependents. Some centralized filing and initial review process at the Board is desirable both from the standpoint of reasonable administrative efficiency and from the standpoint of uniformity of approach.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

References to "agents" have been removed from paragraph (h), inasmuch as the provisions of 38 U.S.C. 5904(d) apply only to attorneys-at-law.

VA assumed when drafting these amendments that parties would submit such evidence as they might wish to the BVA in conjunction with a motion for review of a fee agreement. Material has been added to paragraph (i) to make it clear that this is permitted and also to note that the ruling on the motion will be in the form of an order, as noted in 38 U.S.C. 5904(c)(2). Other editorial changes have been made to the paragraph to make it clear that the BVA need not file its own motions with itself.

The phrase "Department of Veterans Affairs personnel" has been changed to read "Department of Veterans Affairs field personnel" in the section heading and in paragraph (a) as an editorial change in the interest of clarity.

With the modifications described in the preceding paragraphs, § 20.609 is adopted.

One comment was received concerning § 20.610. This comment, like the commenter's remarks pertaining to § 20.609(i), suggests that notice of the availability of review of the reasonableness of representatives' expenses be included in VA Form 2–22a and any other designation of representation by an attorney-at-law or agent. The same response given in the discussion concerning § 20.609(i) applies.

This commenter also suggested that the BVA take into consideration, when reviewing motions pertaining to the reasonableness of representatives' expenses, whether expenses have been incurred for the services of experts which should have been provided by the representative rather than the expert. Normally, experts are used to provide opinions on technical matters, rather than to provide normal representational skills. Based upon past experience, VA does not currently perceive a significant potential for abuse in this area warranting regulation. VA notes that the list of criteria at the end of paragraph (d) is not intended to be all inclusive and that such a problem could be addressed under the regulation—as proposed—should abuse occur. If future experience should show that it is warranted, appropriate specific language can be added at a later time.

Finally, this commenter suggested that whether there was prior authorization of an expense by the claimant or appellant should be added to the list of criteria set out in paragraph (d) used to judge the reasonableness of expenses. In this regard, the commenter expressed concern about claimants not being aware of the cost of litigation. This regulation already contemplates that there will be an agreement between the parties as to whether a representative will be reimbursed for expenses. (See paragraph (b).) While VA recognizes and appreciates the concerns voiced by this commenter, it is reluctant to impose what would in effect be a requirement for the approval of each individual litigation expense in advance in addition to a general agreement for expense reimbursement. Such a requirement would be very burdensome to both claimants/appellants and representatives. Consideration will be given to a requirement for advance approval with respect to large expenses, perhaps those exceeding a particular amount, in the future if experience indicates a need for further regulatory control. At this time, however, this suggestion has not been adopted.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

VA assumed when drafting these amendments that parties would submit such evidence as they might wish to the BVA in conjunction with a motion for review of a representative's bill for expenses. Material has been added to paragraph (d) to make it clear that this is permitted and also to note that the ruling on the motion will be in the form of an order.

The phrase "Department of Veterans Affairs personnel" has been changed to read "Department of Veterans Affairs field personnel" in the section heading and in paragraph (a) as an editorial change in the interest of clarity.

With the modifications described in the preceding paragraphs, § 20.610 is adopted.

One commenter objected to the provision in § 20.611 allowing a representative to continue representation in a case on behalf of survivors for the first year following the death of a claimant or appellant—alleging that the "lengthy period of recognition would constitute an unwarranted invasion of the privacy rights of any survivor(s)." It was suggested that the period be reduced to 30 or 60 days or that there should be a requirement incorporated in the regulation that any survivor who files a claim must be placed on notice of the "power-of-attorney" in effect and offered the opportunity to rescind, limit, or change it.

The suggested changes have not been adopted. A similar provision has been in effect for many years, except that the current regulation provides for

continuation of representation for a "reasonable" period. (See 38 CFR 19.155(c).) This amendment substitutes a one year period (or a period sufficient to complete any appeal pending at the time of the death of the claimant/appellant) for the rather vague standard of "a reasonable period." As is very clear from the proposed amendment, this provision does not preclude the survivor from changing representatives or terminating representation during the applicable period if he or she wishes. Rather, it serves the function of relieving distraught survivors from the burden of being forced to deal with such matters during the initial year following the death of an appellant or claimant and allows representatives to protect the interests of such survivors during this critical period. The amendment is adopted as proposed.

Four comments were received concerning § 20.700.

One commenter recommended that sworn testimony at a personal hearing be recognized as "primary" evidence and that the term "evidence" be defined to include testimony. The commenter argues that this regulation should provide that the BVA must state affirmative reasons for rejecting any testimony and that it should provide that the BVA may not "find a fact to be contrary to the veteran's testimony solely by reason that no reference to such fact exists or is contained in the service records."

That testimony by a veteran or any other witness is evidence is really not a matter which is open to debate. VA, of course, recognizes that it is. (See, for example, proposed § 19.31.) This point is so well settled that VA sees no need to include it in a definition in these rules of practice. The other suggestions from this commenter, described previously, pertain to the deliberative and decision-preparation process of Members of the Board. The weight to be accorded to any particular item of evidence, whether testimony or documentary evidence, is a matter for the triers of fact—in this case, Members of the Board—to determine. Many elements go into determining whether a witness is credible, including his or her demeanor while giving testimony. Little would be gained by a regulatory requirement that the Board specifically state that it did not find a particular witness to be trustworthy.

This commenter asked that paragraph (c) be revised to require that reasons for excluding evidence at hearings on the grounds of lack of relevancy or materiality or because of its repetitious nature be included in the final written decision by the BVA. The place for argument and discussion of why evidence should or should not be excluded at a hearing is at the hearing. The reasons for a ruling on the admissibility of evidence will be articulated at that time. In the event that appeal is taken to a higher tribunal on the question of whether evidence was wrongfully excluded, the hearing transcript will be available.

This commenter objected to the provisions in paragraph (d) limiting informal hearing presentations to 30 minutes, asserting that this was not in the interest of the appellant. These presentations on audio cassette tapes are limited to 30 minutes because the tapes are transcribed by VA at no cost to the appellant or representative as a service to the appellant and representative. Government funds for this service are limited. The use of this procedure is optional. Appellants and their representatives may present recorded or written presentations of any length they wish at their own expense. VA also notes that the 30 minutes allowed is 30 minutes of actual dictation. Off-line time to compose comments is not included. Thus 30 minutes of actual dictation on tape may represent several hours of work. Thirty minutes of dictation tape translates, on the average, into approximately eleven pages of typed material, single spaced. In a 1987 sample survey, the average informal hearing presentation was just under two and one-half pages in length and the longest in the sample survey was five and one-half pages in length.

The other three commenters expressed concern about the provisions of this amendment which limit hearings solely for oral argument unless good cause for such a hearing is shown. Some pointed out that give-and-take discussions with Members of the Board are often very valuable in defining the issues. One commenter expressed concern about obtaining hearings in cases in which an appellant was unable to attend personally due to age or infirmities.

VA does not believe that, in most cases, the benefit to be gained justifies the time and expense necessary to conduct such hearings. In most cases, there is little which can be presented at oral argument which can not be presented equally well in briefs. The proposed regulation provides for exceptions in unusual cases. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.701. This amendment is adopted as proposed.

Two comments were received concerning § 20.702.

One commenter pointed out the error in the spelling of the word "appear" in the paragraph heading of paragraph (d). This was a typesetting error which has been corrected. This commenter also suggested that the sentence "Ordinarily, however, hearings will not be postponed more than 30 days" be added following the sixth sentence of paragraph (d). The suggested language duplicates language found in paragraph (c)(2) and VA agrees that the suggested addition is appropriate. This suggestion has been adopted.

The second commenter pointed out, in essence, that paragraph (d) has not been constructed to recognize hearings in which only representatives appear to present oral argument. This was an oversight which has been corrected.

With these revisions, the amendment is adopted.

One commenter alleged that the discussion of an individual's right to a Travel Board hearing in § 20.703 was confusing and should be further clarified. Unfortunately, the commenter did not indicate why or how the discussion was considered to be confusing. Inasmuch as no explanation was given and inasmuch as the material in the amendment is relatively simple and straightforward, no change has been made.

A second commenter suggested that § 20.703 should be altered to provide that Travel Board hearings will not be granted concerning reconsideration of a prior BVA decision unless a motion for reconsideration has been granted. VA agrees that this is appropriate and this suggestion has been adopted.

This proposed section failed to mention that Travel Board hearings are available in an appeal of a claim reopened after a prior BVA decision. This oversight has been corrected.

With the changes described, the amendment is adopted.

Two comments were received concerning § 20.704.

Paragraph (c) of § 20.704 provides, in part, that requests for a change in a Travel Board hearing date may be made at any time prior to the scheduled date of the hearing if good cause is shown and that if good cause is not shown, the appellant and representative will be notified and given an opportunity to appear at the hearing previously scheduled. One commenter suggested, in essence, that this paragraph be modified to account for the situation in which the request for a change in the hearing date is received so late that notice of the denial of the request cannot be given until after the originally scheduled hearing date has passed. Suggested

language was proposed. The suggested language (which provided that if the original hearing date had already passed by the time that notice of the denial of the request for a new hearing date could be given, the request for the hearing would be deemed to have been withdrawn) has not been adopted. VA agrees, however, that a potential problem with the proposed amendment has been identified by this commenter. Obviously, a request for a new hearing date must be given far enough in advance of the originally scheduled hearing date for the agency of original jurisdiction to act on the request. This problem is solved in the section dealing with hearings other than Travel Board hearings by requiring that a request for a new hearing date must be submitted not later than two weeks prior to the scheduled hearing date. (See § 20.702(c).) The § 20.704 amendment has been revised to include a similar requirement.

The second commenter pointed out, in essence, that paragraph (d) has not been constructed to recognize hearings in which only representatives appear to present oral argument. This was an oversight which has been corrected.

For reasons noted in the following paragraph, the substance of the second sentence of proposed § 20.705(b) has been moved to paragraph (a) of § 20.704. With this correction, and the revisions described in the previous two paragraphs, the § 20.704 amendment is adopted.

One comment was received concerning § 20.705. The commenter suggested that the word "or" be moved from proposed paragraph (a) (paragraph (a)(1) as adopted) to the end of proposed paragraph (b) (paragraph (a)(2) as adopted) and that the second sentence of proposed paragraph (b) be placed in parentheses. VA agrees that the structure of this amendment could be improved, but is taking an alternative approach. The word "or" has been moved as suggested, but the substance of the second sentence of proposed paragraph (b) has been moved to § 20.704(a). The substance of the remainder of § 20.705 has not been changed, but it has been reorganized for greater clarity. With these changes, § 20.705 is adopted.

One comment was received concerning § 20.706. This commenter expressed concern about the reference to the presiding Member of a hearing panel in this section, and in several others, feeling that this was not sufficient to encompass the Hearing Officer program of the Veterans Benefits Administration. No specific changes have been made to mention this program in these amendments. The proposed amendment is not incompatible with the program. The Hearing Officer would be a panel of one and would, of course, be the presiding Member of that panel. This amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.707. In response to a comment, post-traumatic stress disorder was added to the list of BVA Board Member specialties in § 19.11(c) to be taken into consideration when Section expansion is required because an issue presented to a traveling Section of the BVA involves reconsideration of a prior BVA decision. Post-traumatic stress disorder has been added to a similar list in this section for consistency.

An editorial revision has been made to change the word "panel" to "section" in the text of paragraph (b) when the reference is to a reconsideration section or to a traveling section. This change has been made so that the amendment will parallel the language which appears in 38 U.S.C. 7103(b) and 7110.

The proposed amendment is adopted, with these revisions.

The individual who commented on § 20.706 offered the same remarks concerning § 20.708. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has not been adopted and the amendment is adopted as proposed.

Two comments were received pertaining to § 20.709.

This regulation provides for the procedures to be followed when the record is to be left open for a reasonable period of time following a personal hearing in order to allow an appellant and his or her representative to submit additional evidence. One commenter suggested that the amendment be revised to provide clarification of the nature of such evidence, to provide information concerning whether the development of the evidence is the sole responsibility of the appellant or representative, and to distinguish between evidence requested by the BVA as opposed to evidence volunteered by the appellant. This suggestion has not been adopted.

It is neither necessary nor desirable to define all of the types of potential evidence which might come to light during the course of a hearing. Any attempt at such a definition would likely be incomplete, inasmuch as it is virtually impossible to guess at the nature of all such evidence in advance, and little (if anything) would be gained by such an attempt. This is a matter best addressed on a case-by-case basis.

This regulation was not meant to be all inclusive with respect to post-hearing evidence development. It merely provides an opportunity for the record to be left open as a service to appellants and representatives so that they may submit additional evidence after the hearing if they indicate a desire to do so during the hearing. The BVA does not force appellants or representatives to submit evidence against their will, even when it is obvious that the evidence would help their cause. If the Board Members participating in the hearing feel that additional evidence is required, they may undertake the development administratively or through remand. That, however, is beyond the scope of this section governing practice by appellants and representatives before the Board.

The individual who commented on § 20.706 offered the same remarks concerning § 20.709. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has not been adopted. The amendment is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.710. This amendment is adopted as proposed.

Two comments were received regarding § 20.711.

The first commenter recommended that additional information be included as to who may be subpoenaed, noting that the regulation specifies that VA adjudication personnel are exempt but that the exemption did not appear to extend to personnel of the Department of Veterans Affairs' Veterans Health Administration, and that the amendment does not discuss "hostile" witnesses. No change has been made as a result of these comments. Essentially, any witness may be subpoenaed—provided that the requirements of the regulation concerning the need for a subpoena are met. In addition, no particular information concerning "hostile" witnesses is necessary. Obviously, some lack of voluntary cooperation is implicit in the need for a subpoena.

The second commenter complained because this amendment does not allow appeal of rulings on a motion to quash a subpoena, citing the provisions of 38 U.S.C. 7104 which (together with the provisions of 38 U.S.C. 511(a)) provide that all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans are subject to one review on appeal. VA agrees that this is a valid criticism. The restriction complained of, which

appeared in proposed paragraph (f), arose out of concern that appeals would be endlessly delayed due to appeals of interlocutory matters. This concern can also be addressed by providing that the various subpoena related motions are appealable, but that they are not subject to interlocutory appeals. Paragraphs (e) and (h) have been revised to take this less restrictive approach.

The second commenter also argued that the failure of this section to provide for deposing witnesses and its restriction of the issuance of subpoenas to those cases where the necessary evidence cannot be obtained in any other reasonable way are in violation of the provisions of 38 U.S.C. 5711. For the reasons set out below, VA does not agree and no modifications have been made as a result of this criticism.

VA agrees that 38 U.S.C. 5711 is broad enough to support a regulation permitting formal discovery proceedings and broader subpoena power, but the authority of the Secretary (and those to whom he or she chooses to delegate that authority) under this statute is discretionary. The statute confers subpoena power, but it does not compel the exercise of that power. The power to issue subpoenas has existed for a number of years, but its exercise has been limited. The provisions of this section are in conformance with existing procedures and are compatible with the authority which the Secretary has delegated to the Chairman of the BVA and the heads of regional offices and centers. (See 38 CFR 2.1.)

Some erosion of past simplicity of VA adjudication and appeal procedures is inevitable with the growing complexity of veterans' law, the involvement of attorneys-at-law in the adjudication and appeal processes, and the advent of judicial review of decisions of the BVA. VA recognizes the growing complexity of veterans' law and is willing to exercise more subpoena power than has been exercised in the past, but believes that this inherently adversarial process is best limited to those cases where no other reasonable approach will work. VA is also of the opinion that the complexity and adversarial nature of formal discovery proceedings are incompatible with the relatively informal VA adjudication and appeal process. Accordingly, such procedures will not be implemented at this time.

A comment concerning § 20.712 (infra) brought to light the absence of any instructions concerning the payment of witness fees in conjunction with the service of a subpoena. Material concerning this subject has been added.

With the revisions described, proposed § 20.711 is adopted.

One commenter urged that § 20.712 include clarification with regard to "how the appellant would 'incur' expenses other than for reproduction costs" and information on what, if any, reimbursement witnesses may claim and from whom.

In view of this comment, the section heading has been modified to more accurately reflect its intended scope. The purpose of this section is to alert appellants, representatives, and witnesses that VA cannot reimburse them for their expenses. The potential expenses of an appellant in conjunction with a hearing are many and varied. (Various travel and lodging expenses come immediately to mind as examples.) The nature and extent of expenses which an appellant may be willing to incur in conjunction with a hearing are really decisions which he or she must make in consultation with his or her representative. Apart from the availability of review for reasonableness of expenses charged to an appellant by a representative (see § 20.610), no need for regulation in this area is currently perceived. The reimbursement of witnesses is also a matter to be privately determined between the witness and the appellant or representative who requests his or her appearance, except that by law (38 U.S.C. 5711, 38 CFR 2.1(c)) witnesses who are subpoenaed are entitled to the same fees and mileage expenses as are paid witnesses in the district courts of the United States. This comment has brought to light the need for an additional paragraph in § 20.711 pertaining to fees. This paragraph has been added. Except for the modification to the section heading, however, § 20.712 is adopted as proposed.

One comment was received pertaining to § 20.713. This commenter pointed out that there were typographical errors in paragraph (b), in that references to § 20.702(c)(i) and (c)(ii) should be to § 20.702(c)(1) and (c)(2). These typographical errors have been corrected. Editorial changes have also been made to clarify paragraph (a). As originally proposed, it suggested that notices of hearings in simultaneously contested claims would always be given by the BVA itself. That was, of course, not accurate. With these corrections, the proposed amendment is adopted.

Two comments were received regarding § 20.714.

The first commenter suggested, in essence, that what is "good cause" for the preparation of a written transcript should be clarified. No suggested grounds were furnished by the commenter. This suggestion has not been adopted. The BVA has already provided for the automatic transcription of hearings in those situations where a transcript is normally required. (See paragraphs (a)(2) through (a)(5) of the section.) The provision that a transcript will also be prepared when good cause is shown is provided to allow for unanticipated circumstances. This is a matter best determined on a case-by-case basis.

This commenter also suggested that provision be made for the automatic preparation of hearing transcripts when the hearing panel consists of fewer than three Members of the BVA. Such a requirement is not necessary. The audio tape recordings of hearings conducted by traveling Sections of the Board or by the BVA in Washington, DC, are available for review by any additional Board Members who may be assigned to the review of the case after a hearing has been conducted. Proposed § 20.714(a)(4)(iii), regarding the preparation of hearing transcripts in hearings by traveling Sections of the Board consisting of fewer than three Members of the Board, has been withdrawn.

The second commenter asked that "good cause" in paragraph (a)(1) be defined to specifically include situations in which the appellant or a representative wishes to examine a transcript in order to assess whether to appeal to the United States Court of Veterans Appeals. This request has not been granted. There may well be cases in which this would furnish good cause for the preparation of a written transcript, but defining good cause in such a manner as to result in the automatic preparation of a written transcript on this basis is not warranted. Appellants and their representatives will normally have been present at BVA hearings and are well aware of what transpired at the hearing. Further, hearing tape recordings are available to them for review upon request. Convenience alone is not an adequate basis for the considerable expenditure of government funds necessary to produce a written transcript.

Editorial changes have been made in paragraph (c).

This proposed amendment is adopted with the revisions noted.

No comments, suggestions, or objections were received regarding the amendment of § 20.715. This amendment is adopted as proposed, with the addition of minor editorial changes.

The individual who commented on § 20.706 offered the same remarks concerning § 20.716. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has

not been adopted and the amendment is adopted as proposed, with minor editorial changes.

Two comments were received concerning § 20.717.

The first commenter asked that loss of hearing tapes and transcripts be defined to include instances where the tape is generally unintelligible and instances where a written transcript contains substantial errors in transcription. These suggestions have not been adopted. The proposed amendment already contemplates unintelligible recordings. For example, factors to be considered in determining whether a new hearing will be granted include "the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible * * *." (See paragraph (d).) The remedy for correcting errors in transcription is a motion for the correction of the transcript. (See § 20.716.)

This commenter also suggested that provision be made for reimbursing appellants and representatives for expenses which they might incur in attending a new hearing which is required because of loss of the record of a prior hearing due to mishandling or loss of a tape recording or transcript of a hearing by VA. VA is unaware of any legal authority for such reimbursement and the commenter offered none. This comment has not been adopted.

The second commenter is the individual who commented on § 20.706. This individual offered the same remarks concerning § 20.717. For the reasons noted in the discussion concerning § 20.706, the commenter's suggestion has not been adopted and the amendment is adopted as proposed.

One comment was received concerning § 20.800. The comment pertains to the limitations set out in § 20.1304 which are merely cross-referenced in § 20.800. This objection will be addressed in the discussion of the comments concerning § 20.1304. Section 20.800 is adopted as proposed.

No comments, suggestions, or objections were received regarding the amendment of § 20.900. This amendment is adopted as proposed.

One comment was received regarding §§ 20.901 through 20.903. The commenter objected because these regulations do not refer to authority included in Public Law 100-687 for VA field facilities to obtain independent medical expert opinions. Regulations concerning obtaining opinions in the field are beyond the scope of these amendments, which pertain to practice before the Board of Veterans' Appeals. VA's Veterans Benefits Administration has already issued a final regulation concerning obtaining independent medical opinions at the field level (55 FR 18601 dated May 3, 1990). Sections 20.901 through 20.903 are adopted as proposed.

The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on May 17, 1990, which had the effect of invalidating the "administrative allowance" procedures of the BVA both in its current Rules of Practice and in these proposed regulations. (See O.G.C. Precedent Opinion 11-90, 55 FR 27756 dated July 5, 1990.) Such opinions are binding upon the BVA. (See 38 U.S.C. 7104(c).) Accordingly, all references to those procedures have been withdrawn from these proposed amendments. The material withdrawn includes proposed § 20.904.

No comments, suggestions, or objections were received regarding proposed § 20.905. Due to the withdrawal of § 20.904, proposed § 20.905 has been redesignated as § 20.904. The proposed amendment, as redesignated, is adopted.

No comments, suggestions, or objections were received regarding the amendments in proposed §§ 20.1000 through 20.1002. The provisions concerning reconsideration of BVA decisions that were designated in the proposal as §§ 20.1000(d) and 20.1002 are withdrawn. This is necessary as it has been determined, after further consideration, that such provisions of the proposal are, in some respects, inconsistent with the statutory provisions contained in 38 U.S.C. 7103. Instead, VA is publishing additional provisions concerning reconsideration of BVA decisions as part of a proposal in a companion document in this issue of the **Federal Register**. The remainder of § 20.1000 is adopted as proposed.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including § 20.1001(a). This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

Section 20.1001 is adopted as proposed with this revision and with the addition of the words "or evidence" at the end of the second sentence of paragraph (c)(2) to make it clear that additional evidence may now be submitted once a motion for reconsideration has been granted.

Section 20.1002 is reserved.

Two comments were submitted regarding § 20.1003. These comments are similar to the comments offered with respect to proposed provisions in § 20.700 which restrict hearings solely for oral argument by a representative. The response to those comments applies. VA does agree, however, that the latitude permitted in this area in nonreconsideration hearings should also be permitted in the case of reconsideration hearings. Accordingly, modifications have been made to make this section compatible with the provisions of § 20.700(b). With these revisions, the amendment is adopted.

The provisions concerning finality of BVA decisions that were designated in the proposal as §§ 20.1100 and 20.1101 are withdrawn. This is necessary as it has been determined, after further consideration, that such provisions of the proposal are, in some respects, inconsistent with the statutory provisions contained in 38 U.S.C. 7103. Instead, VA is publishing revised provisions dealing with this topic in two separate formats. First, language merely interpreting existing statutory provisions is set forth in § 20.1100 as part of this final rule. (Its provisions constitute interpretative rules and, as such, are exempt from the notice and comment provisions of 5 U.S.C. 553.) Second, additional provisions concerning this topic are set forth as part of a proposal in a companion notice of proposed rulemaking in this issue of the **Federal Register**.

Section 20.1101 is reserved.

No comments, suggestions, or objections were received regarding the amendments to §§ 20.1102 through 20.1106, 20.1200, 20.1201, and 20.1300 through 1302. These amendments are adopted as proposed, with minor editorial changes to § 20.1300 and the editorial revisions to §§ 20.1105 and 20.1301 described in the following paragraphs.

As proposed, the first sentence of § 20.1105 read as follows: "When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a new factual basis for allowing the claim." The requirement that a "new factual basis" be established was carried forward from current 38 CFR 19.194 which was, in turn, based on language contained in what is now 38 U.S.C. 7104(b) which provides that a claim may not again be considered "on the same factual basis" after it has been disallowed by the BVA.

While that statutory language still remains, revisions to 38 U.S.C. 7104(b) made by the Veterans' Judicial Review Act (Pub. L. 100–687) provide an exception in the case of claims reopened under what is now 38 U.S.C. 5108, a new section added by the same act as 38 U.S.C. 3008. Inasmuch as § 20.1105 applies to reopened claims, the words "new factual" have been withdrawn to make the first sentence of the section consistent with the new statutory provisions.

Paragraph (b) of § 20.1301 includes an example of a BVA decision locator number. The form of the locator numbers has recently changed due to the archiving of BVA decisions in computer records rather than on microfilm. Material indicating that the format of locator numbers has changed and an example of the new type of locator number have been added to the proposed amendment, inasmuch as the most recent BVA decisions have the new type of locator number. Material has also been added to note that the copies of BVA Index I–01–1 which are available for public review at the BVA in Washington, DC, are located in the BVA's Research Center. (Of course, BVA decisions are not made available to the public in a form permitting the identification of individuals.)

Two comments were received regarding § 20.1303.

One comment was that "it is suggested that the term 'nonprecedential' be more clearly defined and the relationship to decisions of the Court of Veterans Appeals." (sic) The meaning of the word "nonprecedential" (which appears in the section heading) is fully explained in the text of the section and there is little which would be useful which could be added. Nonprecedential has its usual meaning. That is, as has been VA's position for many years, a BVA decision in one case is not binding in another. This amendment, of course, applies only to BVA decisions and has no bearing on decisions by the United States Court of Veterans Appeals.

The second commenter objected to the removal of the first sentence of the Rule of Practice upon which this amendment was based (current § 19.197). That sentence read as follows: "The Board will strive for consistency in issuing its decisions." The commenter argued that removing the consistency provision was contrary to "due process" and Public Law 100–687.

VA perceives no violation of either "due process" or of Public Law 100–687 through the removal of the sentence in question and the commenter offered no explanation of why it was thought that this was the case. The removal of the sentence was actually a matter of editorial judgment and did not represent any change in policy. In view of the concern expressed, however, similar language has been added.

The second commenter also argued that the Board should be attempting to achieve more consistent opinions, especially in light of the creation of the United States Court of Veterans Appeals, by using BVA decisions as precedential guides. This suggestion has not been adopted.

Several factors are behind the long-standing rule that BVA decisions are not precedential in nature. The majority of decisions by the BVA turn on unique fact situations. For example, the many facts which establish a particular degree of disability in one individual are almost never the same as in the case of another individual. Another, and perhaps the most important, factor is that proceedings before the BVA are ex parte in nature. Questions of fairness would arise by, in effect, making a BVA decision precedential when the Department has no opportunity to present and defend its position in the proceeding. Further, VA may not appeal a BVA decision to the United States Court of Veterans Appeals. (38 U.S.C. 7152(a)). In addition to these historical, and still valid, considerations, uniformity will be achieved on important questions through precedent decisions of the United States Court of Veterans Appeals.

With the addition previously described, the amendment is adopted.

Four comments were received regarding § 20.1304.

This proposed section was essentially a duplicate of a proposed amendment of 38 CFR 19.174 (b) through (e) which was published for public comment on July 6, 1989 (54 FR 28445). The final version of that regulation was published on May 15, 1990. (55 FR 20144). Several changes arising out of comments received were incorporated into the final version of 38 CFR 19.174.

One of the four commenters on proposed § 20.1304 incorporated its prior comments concerning the amendment of 38 CFR 19.174 by reference and submitted an affidavit in support of those comments. Two of the other three commenters offered objections similar to those raised concerning the amendment of 38 CFR 19.174. The comments concerning the amendment of 38 CFR 19.174 were exhaustively discussed in the Federal Register at the time that the final version of that regulation was adopted. These three commenters are referred to that discussion. As noted in that discussion, several changes were made. These included extending the time limit for submitting a request for a change in representation, submitting a request for a personal hearing, and for submitting additional evidence following certification of an appeal to the BVA from 60 to 90 days, or until the date the appellate decision in the case is promulgated by the BVA, whichever comes first. Section 20.1304 has been modified to conform to the final version of 38 CFR 19.174.

The fourth commenter pointed out, correctly, that the reference to § 19.112(b) should be to § 19.37(b). This error has been corrected.

A list of examples of possible VA claimants and appellants other than veterans is given in several locations throughout these revisions, including this section. This list has been expanded to include fiduciaries appointed to receive an individual's VA benefits on his or her behalf. This revision has been made to provide additional information. It does not represent any change in existing practices.

Clarifying material has been added to the first sentence of paragraph (d) to point out that the only evidence provided to all contesting claimants in a contested claim is evidence which is pertinent to the matter contested.

With the revisions noted, this amendment is adopted.

Proposed § 20.1305 has been withdrawn. The purpose of that section was to provide transitional effective date rules in the event that these amendments were adopted prior to September 1, 1989—the effective date of many of the provisions of Public Law 100–687.

There was a typesetting error in Appendix A to part 20. The numbers "20.700–20.717" at the bottom of the left-hand column, beneath the number "20.1304," should have been printed in the second column after the comma which appears after the citation "38 CFR 3.103(c)" which is in the second column directly to the right of the number "20.1304" in the left-hand column. This error has been corrected. The appendix has also been corrected to reflect the changes discussed in previous pages. With these corrections, the appendix is adopted.

The Secretary has determined that these regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the regulations have only a limited effect on claimants/appellants and their representatives. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The information collection requirements contained in §§ 20.202, 20.608, 20.609, 20.610, 20.702, and 20.704 of these regulations have been approved by the Office of Management and Budget (OMB) under OMB control number 2900–0085.

There are no Catalog of Federal Domestic Assistance numbers associated with these regulatory amendments.

List of Subjects

38 CFR Part 14

Claims, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: November 6, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 14 and 19 are amended, and 38 CFR part 20 is added, as set forth below:

PART 14—LEGAL SERVICES, GENERAL COUNSEL

1. The authority citation for part 14 is revised to read as follows:

Authority: 38 U.S.C. 501, 5901–5905.

§§ 14.634 and 14.635 [Removed]

§§ 14.636 and 14.637 [Redesignated as §§ 14.634 and 14.635]

2. Sections 14.634 and 14.635 are removed and §§ 14.636 and 14.637 are redesignated as new §§ 14.634 and 14.635 respectively.

3. In newly designated § 14.634, the last sentence is removed and an authority citation and cross-references are added at the end of the section to read as follows:

§ 14.634 Banks or trust companies acting as guardians.

* * * * *

(Authority: 38 U.S.C. 5903, 5904)

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

4. In newly designated § 14.635, cross-references are added at the end of the section to read as follows:

§ 14.635 Office space and facilities.

* * * * *

Cross-References: Payment of Representative's Fees in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.609 of this chapter. Payment of Representative's Expenses in Proceedings Before Department of Veterans Affairs Personnel and Before the Board of Veterans' Appeals. See § 20.610 of this chapter.

5. 38 CFR Part 19, Board of Veterans' Appeals, is revised to read as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

Subpart A—Operation of the Board of Veterans' Appeals

Sec.

Subpart B—Appeals Processing by Agency of Original Jurisdiction

Subpart C—Administrative Appeals

Subpart D—Hearings Before Traveling Sections of the Board of Veterans' Appeals

Subpart E—Simultaneously Contested Claims

(Authority: 38 U.S.C. 501(a).

Subpart A—Operation of the Board of Veterans' Appeals

§ 19.1 Establishment of the Board.

The Board of Veterans' Appeals is established by authority of, and functions pursuant to, title 38, United States Code, chapter 71.

§ 19.2 Composition of the Board.

The Board consists of a Chairman, Vice Chairman, Deputy Vice Chairmen, Members, and professional, administrative, clerical and stenographic personnel.

(Authority: 38 U.S.C. 501(a), 512, 7101(a))

§ 19.3 Appointment, assignment, and rotation of Members.

(a) *Appointment of Members.* The Chairman is appointed by the President of the United States, by and with the advice and consent of the United States Senate. Members of the Board, including the Vice Chairman, are appointed by the Secretary upon the recommendation of the Chairman with the approval of the President of the United States. Deputy Vice Chairmen are Members of the Board who are appointed to that office by the Secretary upon the recommendation of the Chairman.

(Authority: 38 U.S.C. 501(a), 512, 7101(b))

(b) *Assignment.* The Chairman may divide the Board into Sections of three Members, assign Members of the Board to each such Section, and designate the Chief Member of each such Section. From time to time, a Member may be designated as a Chief Member or a Chief Member may be redesignated as a Member.

(Authority: 38 U.S.C. 7102)

(c) *Rotation.* The Chairman may from time to time rotate the Members of the Sections.

(Authority: 38 U.S.C. 7102)

(d) *Inability to serve.* If, as a result of a vacancy, absence, or for reasons set forth in § 19.12 of this part, a Member of a Section of the Board is unable to participate in the disposition of an appeal before the Section, the Chairman may assign or substitute another Member or direct the Section to proceed without any additional assignment or substitution of Members.

(Authority: 38 U.S.C. 7102)

§ 19.4 Principal functions of the Board.

The principal functions of the Board are to make determinations of appellate jurisdiction, consider all applications on appeal properly before it, conduct hearings on appeal, evaluate the evidence of record, and enter decisions in writing on the questions presented on appeal.

(Authority: 38 U.S.C. 7102, 7104)

§ 19.5 Criteria governing disposition of appeals.

In the consideration of appeals, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.

(Authority: 38 U.S.C. 501(a), 7104(c))

§ 19.6 [Reserved]

§ 19.7 The decision.

(a) *Decisions based on entire record.* The appellant will not be presumed to be in agreement with any statement of fact contained in a Statement of the Case to which no exception is taken. Decisions of the Board are based on a review of the entire record.

(Authority: 38 U.S.C. 7104(a), 7105(d)(4))

(b) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to issues remanded to the agency of original jurisdiction for further development of the case and appeals which are dismissed because the issue has been resolved by administrative action or because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include separately stated findings of fact and conclusions of law on all material issues of fact and law presented on the record, the reasons or bases for those findings and conclusions, and an order granting or denying the benefit or benefits sought on appeal or dismissing the appeal.

(Authority: 38 U.S.C. 7104(d))

§ 19.8 Decision notification.

After a decision has been rendered by the Board, all parties to the appeal and the representatives, if any, will be notified of the results by the mailing of a copy of the written decision to the parties and their representatives at their last known addresses. In the case of appeals involving contesting claimants, the content of the Board's decision will be limited to that information which directly affects the payment or potential payment of the benefit(s) which is (are) the subject of the contested claim. Any Board decision in the same case, but involving separate appeal issues which are not a part of the contested claim, will be made the subject of a separate written decision which will be mailed only to that appellant and his or her representative.

(Authority: 38 U.S.C. 7104(e))

§ 19.9 Remand for further development.

When, during the course of review, it is determined that further evidence or clarification of the evidence or correction of a procedural defect is essential for a proper appellate decision, a Section of the Board shall remand the case to the agency of original jurisdiction, specifying the action to be undertaken.

(Authority: 38 U.S.C. 7102, 7104(a))

§ 19.10 [Reserved]

§ 19.11 Reconsideration Section.

(a) *Assignment of members.* When a motion for reconsideration is allowed, the Chairman will assign a Section to conduct the reconsideration.

(b) *Number of Members constituting a reconsideration Section.* The number of Board Members assigned to the reviewing Section will be determined by increasing the number of Members who participated in the original decision by not less than three additional Members, in increments of three Members. Except when necessary to obtain a majority opinion, a reconsideration Section will not exceed nine Members.

(c) *Members included in the reconsideration Section.* The reconsideration Section will include those Members who participated in the original decision who are available, additional Members assigned by the Chairman to substitute for Members who participated in the decision being reconsidered who are no longer available, and additional Members assigned in accordance with paragraph (b) of this section. In the case of Travel Board hearings involving reconsideration of a prior Board decision, the Members of the traveling Section of the Board will be included in the expanded Section established pursuant to paragraph (b) of this section. If the prior Board decision being reconsidered involves questions concerning post-traumatic stress disorder or radiation, Agent Orange, or asbestos exposure, the traveling Section will be included in an expanded Section which also includes Board Members specializing in those issues.

(Authority: 38 U.S.C. 7102, 7103, 7110)

§ 19.12 Disqualification of Members.

(a) *General.* A Member of the Board will disqualify himself or herself in a hearing or decision on an appeal if that appeal involves a determination in

which he or she participated or had supervisory responsibility in the agency of original jurisdiction prior to his or her appointment as a Member of the Board, or where there are other circumstances which might give the impression of bias either for or against the appellant.

(Authority: 38 U.S.C. 7102, 7104)

(b) *Appeal on same issue subsequent to decision on administrative appeal.* Members of the Board who made the decision on an administrative appeal will disqualify themselves from acting on a subsequent appeal by the claimant on the same issue.

(Authority: 38 U.S.C. 7102, 7104, 7106)

(c) *Disqualification of Members by the Chairman.* The Chairman of the Board, on his or her own motion, may disqualify a Member from acting in an appeal on the grounds set forth in paragraphs (a) and (b) of this section and in those cases where a Member is unable or unwilling to act.

(Authority: 38 U.S.C. 7102, 7104, 7106)

§ 19.13 Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.

The Chairman and/or Vice Chairman have authority delegated by the Secretary of Veterans Affairs to:

(a) Approve the assumption of appellate jurisdiction of an adjudicative determination which has not become final in order to grant a benefit, and

(b) Order VA Central Office investigations of matters before the Board.

(Authority: 38 U.S.C. 303, 512(a))

§ 19.14 Delegation of authority—Appeals Regulations.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(b), 19.3(c), and 19.12(c) of this part may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(d) and 19.11 of this part may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

§§ 19.15–19.24 [Reserved]

Subpart B—Appeals Processing by Agency of Original Jurisdiction

§ 19.25 Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits.

(Authority: 38 U.S.C. 7105(a))

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

When a Notice of Disagreement is timely filed, the agency of original jurisdiction must reexamine the claim and determine if additional review or development is warranted. When a Notice of Disagreement is received following a multiple-issue determination and it is not clear which issue, or issues, the claimant desires to appeal, clarification sufficient to identify the issue, or issues, being appealed should be requested from the claimant or his or her representative. If no preliminary action is required, or when it is completed, the agency of original jurisdiction must prepare a Statement of the Case pursuant to § 19.29 of this part, unless the matter is resolved by granting the benefits sought on appeal or the Notice of Disagreement is withdrawn by the appellant or his or her representative.

(Authority: 38 U.S.C. 7105(d)(1))

§ 19.27 Adequacy of Notice of Disagreement questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the adequacy of a Notice of Disagreement, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 7105, 7106)

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

Whether a Notice of Disagreement is adequate is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to the adequacy of a Notice of Disagreement, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105)

§ 19.29 Statement of the Case.

The Statement of the Case must be complete enough to allow the appellant to present written and/or oral arguments before the Board of Veterans' Appeals. It must contain:

(a) A summary of the evidence in the case relating to the issue or issues with which the appellant or representative has expressed disagreement;

(b) A summary of the applicable laws and regulations, with appropriate citations, and a discussion of how such laws and regulations affect the determination; and

(c) The determination of the agency of original jurisdiction on each issue and the reasons for each such determination with respect to which disagreement has been expressed.

(Authority: 38 U.S.C. 7105(d)(1))

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

(a) *To whom the Statement of the Case is furnished.* The Statement of the Case will be forwarded to the appellant at the latest address of record and a separate copy provided to his or her representative (if any).

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a Substantive Appeal; information on hearing and representation rights; and a VA Form 1–9, "Appeal to Board of Veterans' Appeals."

(Authority: 38 U.S.C. 7105)

§ 19.31 Supplemental Statement of the Case.

A Supplemental Statement of the Case, so identified, will be furnished to the appellant and his or her representative, if any, when additional pertinent evidence is received after a Statement of the Case or the most recent Supplemental Statement of the Case has been issued, when a material defect in the Statement of the Case or a prior Supplemental Statement of the Case is discovered, or when, for any other reason, the Statement of the Case or a prior Supplemental Statement of the Case is inadequate. A Supplemental Statement of the Case will also be issued following development pursuant to a remand by the Board unless the only purpose of the remand is to assemble records previously considered by the agency of original jurisdiction and properly discussed in a prior Statement of the Case or Supplemental Statement of the Case or unless the Board specifies in the remand that a Supplemental Statement of the Case is not required. If the case is remanded to cure a procedural defect, a Supplemental Statement of the Case will be issued to assure full notification to the appellant of the status of the case, unless the Board directs otherwise. A Supplemental Statement of the Case is required following a hearing on appeal before field personnel when new documentary evidence or evidence in

the form of testimony concerning the relevant facts or expert opinion is presented, but is not required if only argument is presented.

(Authority: 38 U.S.C. 7105(d))

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

The agency of original jurisdiction may close the appeal without notice to an appellant or his or her representative for failure to respond to a Statement of the Case within the period allowed. However, if a Substantive Appeal is subsequently received within the 1-year appeal period (60-day appeal period for simultaneously contested claims), the appeal will be considered to be reactivated.

(Authority: 38 U.S.C. 7105(d)(3))

§ 19.33 Timely filing of Notice of Disagreement or Substantive Appeal questioned within the agency of original jurisdiction.

If, within the agency of original jurisdiction, there is a question as to the timely filing of a Notice of Disagreement or Substantive Appeal, the procedures for an administrative appeal must be followed.

(Authority: 38 U.S.C. 7105, 7106)

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.

Whether a Notice of Disagreement or Substantive Appeal has been filed on time is an appealable issue. If the claimant or his or her representative protests an adverse determination made by the agency of original jurisdiction with respect to timely filing of the Notice of Disagreement or Substantive Appeal, the claimant will be furnished a Statement of the Case.

(Authority: 38 U.S.C. 7105)

§ 19.35 Certification of appeals.

Following receipt of the Substantive Appeal, the agency of original jurisdiction will certify the case to the Board of Veterans' Appeals. Certification is accomplished by the completion of VA Form 1–8, "Certification of Appeal." The certification is used for administrative purposes and does not serve to either confer or deprive the Board of Veterans' Appeals of jurisdiction over an issue.

(Authority: 38 U.S.C. 7105)

§ 19.36 Notification of certification of appeal and transfer of appellate record.

When an appeal is certified to the Board of Veterans' Appeals for appellate review and the appellate record is transferred to the Board, the appellant and his or her representative, if any, will be notified in writing of the certification and transfer and of the time limit for requesting a change in representation, for requesting a personal hearing, and for submitting additional evidence described in Rule of Practice 1304 (§ 20.1304 of this chapter).

(Authority: 38 U.S.C. 7105)

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

(a) *Evidence received prior to transfer of records to Board of Veterans' Appeals.* Evidence received by the agency of original jurisdiction prior to transfer of the records to the Board of Veterans' Appeals after an appeal has been initiated (including evidence received after certification has been completed) will be referred to the appropriate rating or authorization activity for review and disposition. If the Statement of the Case and any prior Supplemental Statements of the Case were prepared before the receipt of the additional evidence, a Supplemental Statement of the Case will be furnished to the appellant and his or her representative as provided in § 19.31 of this part, unless the additional evidence received duplicates evidence previously of record which was discussed in the Statement of the Case or a prior Supplemental Statement of the Case or the additional evidence is not relevant to the issue, or issues, on appeal.

(b) *Evidence received after transfer of records to the Board of Veterans' Appeals.* Additional evidence received by the agency of original jurisdiction after the records have been transferred to the Board of Veterans' Appeals for appellate consideration will be forwarded to the Board if it has a bearing on the appellate issue or issues. The Board will then determine what action is required with respect to the additional evidence.

(Authority: 38 U.S.C. 7105(d)(1))

§ 19.38 Action by agency of original jurisdiction when remand received.

When a case is remanded by the Board of Veterans' Appeals, the agency of original jurisdiction will complete the additional development of the evidence or procedural development required. Following completion of the development, the case will be reviewed to determine whether the additional development, together with the evidence which was previously of record, supports the allowance of all benefits sought on appeal. If so, the Board and the appellant and his or her representative, if any, will be promptly informed. If any benefits sought on appeal remain denied following this review, the agency of original jurisdiction will issue a Supplemental Statement of the Case concerning the additional development pertaining to those issues in accordance with the provisions of § 19.31 of this part. Following the 60-day period allowed for a response to the Supplemental Statement of the Case pursuant to Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter), the case will be returned to the Board for further appellate processing unless the appeal is withdrawn or review of the response to the Supplemental Statement of the Case results in the allowance of all benefits sought on appeal. Remanded cases will not be closed for failure to respond to the Supplemental Statement of the Case.

(Authority: 38 U.S.C. 7105(d)(1))

§§ 19.39–19.49 [Reserved]

Subpart C—Administrative Appeals

§ 19.50 Nature and form of administrative appeal.

(a) *General.* An administrative appeal from an agency of original jurisdiction determination is an appeal taken by an official of the Department of Veterans Affairs authorized to do so to resolve a conflict of opinion or a question pertaining to a claim involving benefits under laws administered by the Department of Veterans Affairs. Such appeals may be taken not only from determinations involving dissenting opinions, but also from unanimous determinations denying or allowing the benefit claimed in whole or in part.

(b) *Form of Appeal.* An administrative appeal is entered by a memorandum entitled "Administrative Appeal" in which the issues and the basis for the appeal are set forth.

(Authority: 38 U.S.C. 7106)

§ 19.51 Officials authorized to file administrative appeals and time limits for filing.

The Secretary of Veterans Affairs authorizes certain officials of the Department of Veterans Affairs to file administrative appeals within specified time limits, as follows:

(a) *Central Office*—(1) *Officials.* The Chief Benefits Director or a Service Director of the Veterans Benefits Administration, the Chief Medical Director or a service director of the Veterans Health Administration, and the General Counsel.

(2) *Time limit.* Such officials must file an administrative appeal within 1 year

from the date of mailing notice of such determination to the claimant.

(b) *Agencies of original jurisdiction*—(1) *Officials.* Directors, adjudication officers, and officials at comparable levels in field offices deciding any claims for benefits, from any determination originating within their established jurisdiction.

(2) *Time limit.* The Director or comparable official must file an administrative appeal within 6 months from the date of mailing notice of the determination to the claimant. Officials below the level of Director must do so within 60 days from such date.

(c) *The date of mailing.* With respect to paragraphs (a) and (b) of this section, the date of mailing notice of the determination to the claimant will be presumed to be the same as the date of the letter of notification to the claimant.

(Authority: 38 U.S.C. 7106)

§ 19.52 Notification to claimant of filing of administrative appeal.

When an administrative appeal is entered, the claimant and his or her representative, if any, will be promptly furnished a copy of the memorandum entitled "Administrative Appeal," or an adequate summary thereof, outlining the question at issue. They will be allowed a period of 60 days to join in the appeal if they so desire. The claimant will also be advised of the effect of such action and of the preservation of normal appeal rights if he or she does not elect to join in the administrative appeal.

(Authority: 38 U.S.C. 7106)

§ 19.53 Restriction as to change in payments pending determination of administrative appeals.

If an administrative appeal is taken from a review or determination by the agency of original jurisdiction pursuant to §§ 19.50 and 19.51 of this part, that review or determination may not be used to effect any change in payments until after a decision is made by the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 7106)

§§ 19.54–19.74 [Reserved]

Subpart D—Hearings Before Traveling Sections of the Board of Veterans' Appeals

§ 19.75 Travel Board hearing docket.

Travel Board hearings will be scheduled in the order in which requests for such hearings are received by Department of Veterans Affairs field facilities. Any requests submitted directly to the Board will be transferred to the appropriate field facility and will not be considered to have been filed for docketing purposes until received by the applicable field facility. Each Departmental facility generating appeals activity will:

(a) Mark each written request for a Travel Board hearing to show the date of receipt, and

(b) Maintain a formal log showing, in the order that each request for a Travel Board hearing is received:

(1) The date that each request for a Travel Board hearing was received,

(2) The name of the appellant,

(3) The name of the representative,

(4) The applicable Departmental file number,

(5) Whether the request for a Travel Board hearing has been withdrawn,

(6) And the date that the hearing was conducted or a notation that the appellant failed to appear for the hearing.

(Authority: 38 U.S.C. 7110)

§ 19.76 Notice of time and place of Travel Board hearing.

The agency of original jurisdiction will notify the appellant and his or her representative of the place and time of a Travel Board hearing not less than 60 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled Travel Board hearing with good cause. The requirement will also be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled Travel Board hearing.

(Authority: 38 U.S.C. 7110)

§ 19.77 Providing Statement of the Case when Travel Board hearing has been requested.

If not previously furnished, the appellant and his or her representative will be provided with a Statement of the Case not later than the date on which the agency of original jurisdiction furnishes them with notification of the place and time of the Travel Board hearing. A Statement of the Case is not required when the only issue to be considered by the traveling Section of the Board is the reconsideration of a prior Board of Veterans' Appeals decision.

(Authority: 38 U.S.C. 7105(d)(1), 7110)

§§ 19.78–19.99 [Reserved]

Subpart E—Simultaneously Contested Claims

§ 19.100 Notification of right to appeal in simultaneously contested claims.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for initiation of an appeal, as well as hearing and representation rights.

(Authority: 38 U.S.C. 7105A(a))

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the Statement of the Case. The Statement of the Case so furnished will contain only information which directly affects the payment or potential payment of the benefit(s) which is (are) the subject of that contested claim. The interested parties who filed Notices of Disagreement will be duly notified of the right to file, and the time limit within which to file, a Substantive Appeal and will be furnished with VA Form 1–9, "Appeal to Board of Veterans' Appeals."

(Authority: 38 U.S.C. 7105A(b))

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

When a Substantive Appeal is filed in a simultaneously contested claim, the content of the Substantive Appeal will be furnished to the other contesting parties to the extent that it contains information which could directly affect the payment or potential payment of the benefit which is the subject of the contested claim.

(Authority: 38 U.S.C. 7105A(b))

APPENDIX A TO PART 19—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
19.5	38 CFR 14.507(b)	See re "precedent opinions" of the General Counsel of the Department of Veterans Affairs.
	38 CFR 20.1303	*Rule 1303. Nonprecedential nature of Board decisions.*
19.7	38 CFR 20.905	*Rule 905. Vacating a decision.*
19.13	38 CFR 2.66	Contains similar provisions.
19.25	38 CFR 19.52	*Notification to claimant of filing of administrative appeal.*
	38 CFR 19.100	*Notification of right to appeal in simultaneously contested claims.*
19.26	38 CFR 20.302	*Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.*
19.27	38 CFR 19.50–19.53	See re administrative appeals.
19.30	38 CFR 20.202	*Rule 202. Substantive Appeal.*
19.32	38 CFR 20.302	*Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.*
	38 CFR 20.501	*Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.*
19.33	38 CFR 19.50–19.53	See re administrative appeals.
19.50	38 CFR 19.53	*Restriction as to change in payments pending determination of administrative appeals.*
19.76	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.*
19.100	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
19.101	38 CFR 19.30	*Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.*

6. New Part 20, Board of Veterans' Appeals: Rules of Practice, is added to 38 CFR to read as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

Subpart A—General

Sec.

Subpart B—The Board

Subpart C—Commencement and Perfection of Appeal

Subpart D—Filing

Subpart E—Administrative Appeals

Subpart F—Simultaneously Contested Claims

Subpart G—Representation

Subpart H—Hearings on Appeal

Authority: 38 U.S.C. 501(a).

Subpart A—General

§ 20.1 Rule 1. Purpose and construction of Rules of Practice.

(a) *Purpose.* These rules establish the practices and procedures governing appeals to the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 501(a), 7102, 7104)

(b) *Construction.* These rules are to be construed to secure a just and speedy decision in every appeal.

(Authority: 38 U.S.C. 501(a), 5107, 7104)

§ 20.2 Rule 2. Procedure in absence of specific Rule of Practice.

Where in any instance there is no applicable rule or procedure, the Chairman may prescribe a procedure which is consistent with the provisions of title 38, United States Code, and these rules.

(Authority: 38 U.S.C. 501(a), 512(a), 7102, 7104)

§ 20.3 Rule 3. Definitions.

As used in these Rules:

(a) *Agency of original jurisdiction* means the Department of Veterans Affairs regional office, medical center, clinic, cemetery, or other Department of Veterans Affairs facility which made the initial determination on a claim or, if the applicable records are later permanently transferred to another Department of Veterans Affairs facility, its successor.

(b) *Agent* means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of Rule 604 (§ 20.604 of this part). It does not include representatives recognized under Rules 602, 603, or 605 (§ 20.602, 20.603, or § 20.605 of this part).

(c) *Appellant* means a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 7105.

(d) *Attorney-at-law* means a member in good standing of a State bar.

(e) *Benefit* means any payment, service, commodity, function, or status, entitlement to which is determined under laws administered by the Department of Veterans Affairs pertaining to veterans and their dependents and survivors.

(f) *Claim* means application made under title 38, United States Code, and implementing directives for entitlement to Department of Veterans Affairs benefits or for the continuation or increase of such benefits, or the defense of a proposed agency adverse action concerning benefits.

(g) *Claimant* means a person who has filed a claim, as defined by paragraph (f) of this section.

(h) *Hearing on appeal* means a hearing conducted after a Notice of Disagreement has been filed in which argument and/or testimony is presented concerning the determination, or determinations, by the agency of original jurisdiction being appealed.

(i) *Law student* means an individual pursuing a Juris Doctor or equivalent degree at a school approved by a recognized accrediting association.

(j) *Legal intern* means a graduate of a law school, which has been approved by a recognized accrediting association, who has not yet been admitted to a State bar.

(k) *Motion* means a request that the Board rule on some question which is subsidiary to the ultimate decision on the outcome of an appeal. For example, the questions of whether a representative's fees are reasonable or whether additional evidence may be submitted more than 90 days after certification of an appeal to the Board are raised by motion (see Rule 609, paragraph (i), and Rule 1304, paragraph (b) §§ 20.609(i) and 20.1304(b) of this part). Unless raised orally at a personal hearing before Members of the Board, motions for consideration by the Board must be made in writing. No formal type of document is required. The motion may be in the form of a letter which contains the necessary information.

(l) *Paralegal* means a graduate of a course of paralegal instruction given by a school which has been approved by a recognized accrediting association, or an individual who has equivalent legal experience.

(m) *Simultaneously contested claim* refers to the situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

(n) *State* includes any State, possession, territory, or Commonwealth of the United States, as well as the District of Columbia.

(Authority: 38 U.S.C. 501(a))

§§ 20.4–20.99 [Reserved]

Subpart B—The Board

§ 20.100 Rule 100. Name, business hours, and mailing address of the Board.

(a) *Name.* The name of the Board is the Board of Veterans' Appeals.

(b) *Business hours.* The Board is open during business hours on all days except Saturday, Sunday and legal holidays.

Business hours are from 8 a.m. to 4:30 p.m.

(c) *Mailing address.* Except as otherwise noted in these Rules, mail to the Board must be addressed to: Chairman (01), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420.

(Authority: 38 U.S.C. 7101(a))

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General.* All questions of law and fact necessary to a decision by the Secretary of Veterans Affairs under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors are subject to review on appeal to the Secretary. Decisions in such appeals are made by the Board of Veterans' Appeals. In its decisions, the Board is bound by applicable statutes, the regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs. Examples of the issues over which the Board has jurisdiction include, but are not limited to, the following:

(1) Entitlement to, and benefits resulting from, service-connected disability or death (38 U.S.C. chapter 11).

(2) Dependency and indemnity compensation for service-connected death, including benefits in certain cases of inservice or service-connected deaths (38 U.S.C. 1312) and certification and entitlement to death gratuity (38 U.S.C. 1323).

(3) Benefits for survivors of certain veterans rated totally disabled at time of death (38 U.S.C. 1318).

(4) Entitlement to nonservice-connected disability pension, service pension and death pension (38 U.S.C. chapter 15).

(5) All-Volunteer Force Educational Assistance Program (38 U.S.C. chapter 30).

(6) Training and Rehabilitation for Veterans with Service-Connected Disabilities (38 U.S.C. chapter 31).

(7) Post-Vietnam Era Veterans' Educational Assistance (38 U.S.C. chapter 32).

(8) Veterans' Educational Assistance (38 U.S.C. chapter 34).

(9) Survivors' and Dependents' Educational Assistance (38 U.S.C. chapter 35).

(10) Veterans' Job Training (Pub. L. 98-77, as amended; 38 CFR 21.4600 *et seq.*).

(11) Educational Assistance for Members of the Selected Reserve (10 U.S.C. chapter 106).

(12) Educational Assistance Test Program (10 U.S.C. chapter 107; 38 CFR 21.5701 *et seq.*).

(13) Educational Assistance Pilot Program (10 U.S.C. chapter 107; 38 CFR 21.5290 *et seq.*).

(14) Matters arising under National Service Life Insurance and United States Government Life Insurance (38 U.S.C. chapter 19).

(15) Payment or reimbursement for unauthorized medical expenses (38 U.S.C. 1728).

(16) Burial benefits and burial in National Cemeteries (38 U.S.C. chapters 23 and 24).

(17) Benefits for persons disabled by medical treatment or vocational rehabilitation (38 U.S.C. 1151).

(18) Basic eligibility for home, condominium and mobile home loans as well as waiver of payment of loan guaranty indebtedness (38 U.S.C. chapter 37, 38 U.S.C. 5302).

(19) Waiver of recovery of overpayments (38 U.S.C. 5302).

(20) Forfeiture of rights, claims or benefits for fraud, treason, or subversive activities (38 U.S.C. 6102-6105).

(21) Character of discharge (38 U.S.C. 5303).

(22) Determinations as to duty status (38 U.S.C. 101(21)-(24)).

(23) Determinations as to marital status (38 U.S.C. 101(3), 103).

(24) Determination of dependency status as parent or child (38 U.S.C. 101(4), (5)).

(25) Validity of claims and effective dates of benefits (38 U.S.C. chapter 51).

(26) Apportionment of benefits (38 U.S.C. 5307).

(27) Payment of benefits while a veteran is hospitalized and questions regarding an estate of an incompetent institutionalized veteran (38 U.S.C. 5503).

(28) Benefits for surviving spouses and children of deceased veterans under Public Law 97-377, section 156 (38 CFR 3.812(d)).

(29) Eligibility for automobile and automobile adaptive equipment assistance (38 U.S.C. chapter 39).

(b) *Appellate jurisdiction of determinations of the Veterans Health Administration.* The Board's appellate jurisdiction extends to questions of eligibility for hospitalization, outpatient treatment, and nursing home and domiciliary care; for devices such as prostheses, canes, wheelchairs, back braces, orthopedic shoes, and similar appliances; and for other benefits administered by the Veterans Health Administration. Medical determinations, such as determinations of the need for and appropriateness of specific types of medical care and treatment for an individual, are not adjudicative matters and are beyond the Board's jurisdiction. Typical examples of these issues are whether a particular drug should be prescribed, whether a specific type of physiotherapy should be ordered, and similar judgmental treatment decisions with which an attending physician may be faced.

(c) *Appeals as to jurisdiction.* All claimants have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular issue. This includes questions relating to the timely filing and adequacy of the Notice of Disagreement and the Substantive Appeal. Subject to review by courts of competent jurisdiction, only the Board of Veterans' Appeals will make final decisions with respect to its jurisdiction.

(Authority: 38 U.S.C. 511(a), 7104)

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 900(c) (§ 20.900(c) of this part) MAY ALSO be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 608(b), 717(d), and 1001(c) (§§ 20.608(b), 20.717(d), and 20.1001(c) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2 of this part) may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in conjunction with a proceeding or motion in connection therewith assigned to them by the Chairman, by Members of the Board who have been designated as the Chief Member of a Section of the Board or as the Acting Chief Member of a Section of the Board and by a Member of the Board who is acting as the presiding Member of a hearing panel.

(d) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 606(e), 609(i), 610(d), 711(e), 711(f), and 1304(b) (§§ 20.606(e), 20.609(i), 20.610(d), 20.711(e), 20.711(f), and 20.1304(b) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board. When, however, the matter arises in conjunction with an appeal or any proceeding instituted before the Board, or any motion in connection therewith,

assigned to a Section, or Sections, by the Chairman for a hearing and/or disposition, this authority shall be exercised by the Members of the Board Section, or Sections, involved.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

§§ 20.103–20.199 [Reserved]

Subpart C—Commencement and Perfection of Appeal

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement in writing and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

(Authority: 38 U.S.C. 7105)

§ 20.201 Rule 201. Notice of Disagreement.

A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear.

(Authority: 38 U.S.C. 7105)

§ 20.202 Rule 202. Substantive Appeal.

A Substantive Appeal consists of a properly completed VA Form 1–9, "Appeal to Board of Veterans' Appeals," or correspondence containing the necessary information. If the Statement of the Case and any prior Supplemental Statements of the Case addressed several issues, the Substantive Appeal must either indicate that the appeal is being perfected as to all of those issues or must specifically identify the issues appealed. The Substantive Appeal should set out specific arguments relating to errors of fact or law made by the agency of original jurisdiction in reaching the determination, or determinations, being appealed. To the extent feasible, the argument should be related to specific items in the Statement of the Case and any prior Supplemental Statements of the Case. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to allege specific error of fact or law in the determination, or determinations, being appealed. The Board will not presume that an appellant agrees with any statement of fact contained in a Statement of the Case or a Supplemental Statement of the Case which is not specifically contested. Proper completion and filing of a Substantive Appeal are the last actions the appellant needs to take to perfect an appeal.

(Authority: 38 U.S.C. 7105(d)(3)–(5))

(Approved by the Office of Management and Budget under control number 2900–0085)

§ 20.203 Rule 203. Decision as to adequacy of the Substantive Appeal.

A decision as to the adequacy of allegations of error of fact or law in a Substantive Appeal will be made by the Board of Veterans' Appeals. When the Board raises the issue of adequacy of the Substantive Appeal, the appellant and representative, if any, will be given notice of the issue and a period of 60 days following the date on which such notice is mailed to present written argument or to request a hearing to present oral argument on this question. The date of mailing of the notice will be presumed to be the same as the date of the letter of notification.

(Authority: 38 U.S.C. 7105(d)(3), 7108)

§ 20.204 Rule 204. Withdrawal of Notice of Disagreement or Substantive Appeal.

(a) *Notice of Disagreement.* A Notice of Disagreement may be withdrawn in writing before a timely Substantive Appeal is filed.

(Authority: 38 U.S.C. 7105(d)(1))

(b) *Substantive Appeal.* A Substantive Appeal may be withdrawn in writing at any time before the Board of Veterans' Appeals promulgates a decision.

(Authority: 38 U.S.C. 7105(d)(3))

(c) *Who May Withdraw.* Withdrawal may be by the appellant or by his or her authorized representative, except that a representative may not withdraw either a Notice of Disagreement or Substantive Appeal filed by the appellant personally without the express written consent of the appellant. The agency of original jurisdiction may not withdraw a Notice of Disagreement or a Substantive Appeal after filing of either or both.

(Authority: 38 U.S.C. 7105(b)(2))

§§ 20.205–20.299 [Reserved]

Subpart D—Filing

§ 20.300 Rule 300. Place of filing Notice of Disagreement and Substantive Appeal.

The Notice of Disagreement and Substantive Appeal must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed unless notice has been received that the applicable Department of Veterans Affairs records have been transferred to another Department of Veterans Affairs office. In that case, the Notice of Disagreement or Substantive Appeal must be filed with the Department of Veterans Affairs office which has assumed jurisdiction over the applicable records.

(Authority: 38 U.S.C. 7105 (b)(1), (d)(3))

§ 20.301 Rule 301. Who can file an appeal.

(a) *Persons authorized.* A Notice of Disagreement and/or a Substantive Appeal may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney or declaration of representation, as applicable, is on record or accompanies such Notice of Disagreement or Substantive Appeal.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement and a Substantive Appeal may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.302 Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) *Notice of Disagreement.* Except in the case of simultaneously contested claims, a claimant, or his or her representative, must file a Notice of Disagreement with a determination by the agency of original jurisdiction within

one year from the date that that agency mails notice of the determination to him or her. Otherwise, that determination will become final. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105(b)(1))

(b) *Substantive Appeal.* Except in the case of simultaneously contested claims, a Substantive Appeal must be filed within 60 days from the date that the agency of original jurisdiction mails the Statement of the Case to the appellant, or within the remainder of the 1-year period from the date of mailing of the notification of the determination being appealed, whichever period ends later. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case and the date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105 (b)(1), (d)(3))

(c) *Response to Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished, a period of 60 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 7105(d)(3))

§ 20.303 Rule 303. Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

An extension of the 60-day period for filing a Substantive Appeal, or the 60-day period for responding to a Supplemental Statement of the Case when such a response is required, may be granted for good cause. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal or the response to the Supplemental Statement of the Case. The request for extension must be filed with the Department of Veterans Affairs office from which the claimant received notice of the determination being appealed, unless notice has been received that the applicable records have been transferred to another Department of Veterans Affairs office. A denial of a request for extension may be appealed to the Board.

(Authority: 38 U.S.C. 7105(d)(3))

§ 20.304 Rule 304. Filing additional evidence does not extend time limit for appeal.

The filing of additional evidence after receipt of notice of an adverse determination does not extend the time limit for initiating or completing an appeal from that determination.

(Authority: 38 U.S.C. 7105)

§ 20.305 Rule 305. Computation of time limit for filing.

(a) *Acceptance of postmark date.* When these Rules require that any written document be filed within a specified period of time, a response postmarked prior to expiration of the applicable time limit will be accepted as having been timely filed. In the event that the postmark is not of record, the postmark date will be presumed to be five days prior to the date of receipt of the document by the Department of Veterans Affairs. In calculating this 5-day period, Saturdays, Sundays and legal holidays will be excluded.

(b) *Computation of time limit.* In computing the time limit for filing a written document, the first day of the specified period will be excluded and the last day included. Where the time limit would expire on a Saturday, Sunday, or legal holiday, the next succeeding workday will be included in the computation.

(Authority: 38 U.S.C. 7105)

§ 20.306 Rule 306. Legal holidays.

For the purpose of Rule 305 (§ 20.305 of this part), the legal holidays, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows: New Year's Day—January 1; Inauguration Day—January 20 of every fourth year or, if the 20th falls on a Sunday, the next succeeding day selected for public observance of the inauguration; Birthday of Martin Luther King, Jr.—Third Monday in January; Washington's Birthday—Third Monday in February; Memorial Day—Last Monday in May; Independence Day—July 4; Labor Day—First Monday in September; Columbus Day—Second Monday in October; Veterans Day—November 11; Thanksgiving Day—Fourth Thursday in November; and Christmas Day—December 25. When a holiday occurs on a Saturday, the Friday immediately before is the legal public holiday. When a holiday occurs on a Sunday, the Monday immediately after is the legal public holiday.

(Authority: 5 U.S.C. 6103)

§§ 20.307–20.399 [Reserved]

Subpart E—Administrative Appeals

§ 20.400 Rule 400. Action by claimant or representative on notification of administrative appeal.

When an official of the Department of Veterans Affairs enters an administrative appeal, the claimant and his or her representative, if any, are notified and given a period of 60 days from the date of mailing of the letter of notification to join in the administrative appeal. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. If the claimant, or the representative acting on his or her behalf, elects to join in the administrative appeal, it becomes a "merged appeal" and the rules governing an appeal initiated by a claimant are for application. The presentation of evidence or argument by the claimant or his or her representative in response to notification of the right to join in the administrative appeal will be construed as an election to join in the administrative appeal. If the claimant does not authorize the merger, he or she must hold such evidence or argument in abeyance until resolution of the administrative appeal.

(Authority: 38 U.S.C. 7106)

§ 20.401 Rule 401. Effect of decision on administrative or merged appeal on claimant's appellate rights.

(a) *Merged appeal.* If the administrative appeal is merged, the appellate decision on the merged appeal will constitute final disposition of the claimant's appellate rights.

(b) *Appeal not merged.* If the claimant does not authorize merger, normal appellate rights on the same issue are preserved, and a decision in a separate appeal perfected by the claimant will be entered by a Section of the Board which does not include Members who made the decision on the administrative appeal. The period of time from the date

of notification to the claimant of the administrative appeal to the date of the Board's decision on the administrative appeal is not chargeable to the claimant for purposes of determining the time limit for perfecting his or her separate appeal.

(Authority: 38 U.S.C. 7106)

§§ 20.402–20.499 [Reserved]

Subpart F—Simultaneously Contested Claims

§ 20.500 Rule 500. Who can file an appeal in simultaneously contested claims.

In a simultaneously contested claim, any claimant or representative of a claimant may file a Notice of Disagreement or Substantive Appeal within the time limits set out in Rule 501 (§ 20.501 of this part).

(Authority: 38 U.S.C. 7105(b)(2), 7105A)

§ 20.501 Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.

(a) *Notice of Disagreement.* In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 7105A(a))

(b) *Substantive Appeal.* In the case of simultaneously contested claims, a Substantive Appeal must be filed within 30 days from the date of mailing of the Statement of the Case. The date of mailing of the Statement of the Case will be presumed to be the same as the date of the Statement of the Case for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105A(b))

(c) *Supplemental Statement of the Case.* Where a Supplemental Statement of the Case is furnished by the agency of original jurisdiction in a simultaneously contested claim, a period of 30 days from the date of mailing of the Supplemental Statement of the Case will be allowed for response, but the receipt of a Supplemental Statement of the Case will not extend the time allowed for filing a Substantive Appeal as set forth in paragraph (b) of this section. The date of mailing of the Supplemental Statement of the Case will be presumed to be the same as the date of the Supplemental Statement of the Case for purposes of determining whether a response has been timely filed. Provided a Substantive Appeal has been timely filed in accordance with paragraph (b) of this section, the response to a Supplemental Statement of the Case is optional and is not required for the perfection of an appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case. If a Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case, a Substantive Appeal must be filed with respect to those issues within 30 days of the date of mailing of the Supplemental Statement of the Case in order to perfect an appeal with respect to the additional issues.

(Authority: 38 U.S.C. 7105(d)(3), 7105A(b))

§ 20.502 Rule 502. Time limit for response to notice of appeal by another contesting party in a simultaneously contested claim.

Notice of an appeal by another contesting party in a simultaneously contested claim is given by sending a copy of that party's Substantive Appeal to all other contesting parties. A period of 30 days from the date of mailing of the copy of the Substantive Appeal is allowed for filing a brief or argument in answer. The date of mailing of the copy will be presumed to be the same as the date of the letter which accompanies the copy.

(Authority: 38 U.S.C. 7105A(b))

§ 20.503 Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.

An extension of the 30-day period to file a Substantive Appeal in simultaneously contested claims may be granted if good cause is shown. In granting an extension, consideration will be given to the interests of the other parties involved. A request for such an extension must be in writing and must be made prior to expiration of the time limit for filing the Substantive Appeal.

(Authority: 38 U.S.C. 7105A(b))

§ 20.504 Rule 504. Notices sent to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

(Authority: 38 U.S.C. 7105A(b))

§§ 20.505–20.599 [Reserved]

Subpart G—Representation

Cross-Reference: In cases involving access to medical records relating to drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.600 Rule 600. Right to representation.

An appellant will be accorded full right to representation in all stages of an appeal by a recognized organization, attorney, agent, or other authorized person.

(Authority: 38 U.S.C. 5901–5905, 7105(a))

§ 20.601 Rule 601. Only one representative recognized.

A specific claim may be prosecuted at any one time by only one recognized organization, attorney, agent or other person properly designated to represent the appellant.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.602 Rule 602. Representation by recognized organizations.

In order to designate a recognized organization as his or her representative, an appellant must execute a VA Form 21–22, "Appointment of Veterans Service Organization as Claimant's Representative." This form gives the organization power of attorney to represent the appellant. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked by the appellant or unless the representative has properly withdrawn.

(Authority: 38 U.S.C. 7105(b)(2))

§ 20.603 Rule 603. Representation by attorneys-at-law.

(a) *Designation.* An attorney-at-law may be designated as an appellant's representative through a properly executed VA Form 2–22a, "Appointment of Attorney or Agent as Claimant's Representative." This form gives the attorney power of attorney to represent the appellant. In lieu thereof, an attorney may state in writing on his or her letterhead that he or she is authorized to represent the appellant in order to have access to information in the appellant's file pertinent to the particular claim presented. For an attorney to have complete access to all information in an individual's records, the attorney must provide a signed

consent from the appellant or the appellant's guardian. Such consent shall be equivalent to an executed power of attorney. The designation must be of an individual attorney, rather than a firm or partnership. An appellant may limit an attorney's right to act as his or her representative in an appeal to representation with respect to a specific claim for one or more specific benefits by noting the restriction in the written designation. Unless specifically noted to the contrary, however, designations of an attorney as a representative will extend to all matters with respect to claims for benefits under laws administered by the Department of Veterans Affairs. Designations are effective when they are received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn. Legal interns, law students, and paralegals may not be independently accredited to represent appellants under this Rule.

(b) *Attorneys employed by recognized organization.* A recognized organization may employ an attorney-at-law to represent an appellant. If the attorney so employed is not an accredited representative of the recognized organization, the signed consent of the appellant for the substitution of representatives must be obtained and submitted to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. When the signed consent is received by the agency of original jurisdiction or the Board, as applicable, the attorney will be recognized as the appellant's representative in lieu of the organization.

(c) *Participation of associated or affiliated attorneys.* With the specific written consent of the appellant, an attorney associated or affiliated with the appellant's attorney of record, including an attorney employed by the same legal services office as the attorney of record, may assist in representation of the appellant and may have access to the appellant's Department of Veterans Affairs records to the same extent as the attorney of record. Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or an attorney employed by the same legal services office. The consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney of record; the consent of the appellant for the use of the services of the associated or affiliated attorney and for that individual to have access to applicable Department of Veterans Affairs records; and the name of the associated or affiliated attorney who will be assisting in the case. The consent must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans' Appeals. The presiding Member at a hearing on appeal may require that not more than one attorney participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(Authority: 38 U.S.C. 5901, 5904)

§ 20.604 Rule 604. Representation by agents.

(a) *Designation.* The designation of an agent will be by a duly executed power of attorney, VA Form 2–22a, "Appointment of Attorney or Agent as Claimant's Representative," or its equivalent. The designation must be of an individual, rather than a firm or partnership. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(b) *Admission to practice.* The provisions of 38 U.S.C. 5904 and of § 14.629(b) of this chapter are applicable to the admission of agents to practice before the Department of Veterans Affairs. Authority for making determinations concerning admission to practice rests with the General Counsel of the Department of Veterans Affairs, and any questions concerning admissions to practice should be addressed to: Office of the General Counsel (022A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 5904)

§ 20.605 Rule 605. Other persons as representative.

(a) *Scope of rule.* This section applies to representation other than by a recognized organization, an agent admitted to practice before the Department of Veterans Affairs, or an attorney-at-law.

(b) *Who may act as representative.* Any competent person may be recognized as a representative for a particular claim, unless that person has been barred from practice before the Department of Veterans Affairs.

(c) *Designation.* The designation of an individual to act as an appellant's representative may be made by executing a VA Form 2–22a, "Appointment of Attorney or Agent as Claimant's Representative." This form gives the individual power of attorney to represent the appellant in all matters pertaining to the presentation and prosecution of claims for any and all benefits under laws administered by the Department of Veterans Affairs. In lieu of using the form, the designation may be by a written document signed by both the appellant and the individual representative, which may be in the form of a letter, which authorizes a named individual to act as the appellant's representative only with respect to a specific claim involving one or more specific benefits. The document must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; the name of the individual representative; a description of the specific claim for benefits to which the designation of representation applies; and a certification that no compensation will be charged or paid for the individual representative's services. The designation, in either form, must be filed with the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, with the Board of Veterans' Appeals. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(d) *Representation of more than one appellant.* An individual recognized as an appellant's representative under this Rule may represent only one appellant. If an individual has been recognized as

a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in § 14.630 of this chapter.

(Authority: 38 U.S.C. 5903)

§ 20.606 Rule 606. Legal interns, law students and paralegals.

(a) *When services of legal interns, law students and paralegals may be used.* Not more than two legal interns, law students or paralegals may assist an attorney-at-law in the presentation of evidence and argument in appeals before the Board of Veterans' Appeals in Washington, DC, or before traveling Sections of the Board at Department of Veterans Affairs field facilities.

(b) *Consent of appellant.* If it is contemplated that a legal intern, law student, or paralegal will assist in the appeal, written consent must be obtained from the appellant. The written consent must include the name of the veteran; the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; the name of the attorney-at-law; the consent of the appellant for the use of the services of legal interns, law students, or paralegals and for such individuals to have access to applicable Department of Veterans Affairs records; and the names of the legal interns, law students, or paralegals who will be assisting in the case. In the case of appeals before the Board in Washington, DC, the signed consent must be submitted to: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of appeals before traveling Sections of the Board, the consent must be presented to the presiding Member of the traveling Section as noted in paragraph (d). Unless revoked by the appellant, such consent will remain effective in the event the original attorney of record is replaced by another attorney who is a member of the same law firm or another attorney employed by the same legal services office.

(c) *Supervision.* Legal interns, law students and paralegals must be under the direct supervision of a recognized attorney-at-law in order to prepare and present cases before the Board of Veterans' Appeals.

(d) *Hearings.* Legal interns, law students and paralegals who desire to participate at a hearing before the Board in Washington, DC, must make advance arrangements with the Chief of the Hearing Section and submit written authorization from the attorney naming the individual who will be participating in the hearing. In the case of proceedings before traveling Sections of the Board in the field, the attorney-at-law must inform the office of the Department of Veterans Affairs official who gave notice of the Travel Board hearing date and time not more than 10 days prior to the scheduled hearing date that the services of a legal intern, law student, or paralegal will be used at the hearing. At the same time, a prehearing conference with the presiding Member of the traveling Section must be requested. At the conference, the written consent of the appellant for the use of the services of such an individual required by paragraph (b) must be presented and agreement reached as to the individual's role in the hearing. Legal interns, law students or paralegals may not present oral arguments at hearings either in the field or in Washington, DC, unless the recognized attorney-at-law is present. Not more than two such individuals may make presentations at a hearing. The presiding Member at a hearing on appeal may require that not more than one such individual participate in the examination of any one witness or impose other reasonable limitations to ensure orderly conduct of the hearing.

(e) *Withdrawal of permission for legal interns, law students, and paralegals to assist in the presentation of an appeal.* When properly designated, the attorney-at-law is the recognized representative of the appellant and is responsible for ensuring that an appeal is properly presented. Legal interns, law students, and paralegals are permitted to assist in the presentation of an appeal as a courtesy to the attorney-at-law. Permission for a legal intern, law student, or paralegal to prepare and present cases before the Board may be withdrawn by the Chairman at any time if a lack of competence, unprofessional conduct, or interference with the appellate process is demonstrated by that individual.

(Authority: 38 U.S.C. 5904, 7105(b)(2))

§ 20.607 Rule 607. Revocation of a representative's authority to act.

Subject to the provisions of § 20.1304 of this part, an appellant may revoke a representative's authority to act on his or her behalf at any time, irrespective of whether another representative is concurrently designated. Written notice of the revocation must be given to the agency of original jurisdiction or, if the appellate record has been certified to the Board for review, to the Board of Veterans' Appeals. The revocation is effective when notice of the revocation is received by the agency of original jurisdiction or the Board, as applicable. An appropriate designation of a new representative will automatically revoke any prior designation of representation. If an appellant has limited a designation of representation by an attorney-at-law to a specific claim under the provisions of Rule 603, paragraph (a) (§ 20.603(a) of this part), or has limited a designation of representation by an individual to a specific claim under the provisions of Rule 605, paragraph (c) (§ 20.605(c) of this part), such specific authority constitutes a revocation of an existing representative's authority to act only with respect to, and during the pendency of, that specific claim. Following the final determination of that claim, the existing representative's authority to act will be automatically restored in full, unless otherwise revoked.

(Authority: 38 U.S.C. 5901–5904)

§ 20.608 Rule 608. Withdrawal of services by a representative.

(a) *Withdrawal of services prior to certification of an appeal.* A representative may withdraw services as representative in an appeal at any time prior to certification of the appeal to the Board of Veterans' Appeals by the agency of original jurisdiction. The representative must give written notice of such withdrawal to the appellant and to the agency of original jurisdiction. The withdrawal is effective when notice of the withdrawal is received by the agency of original jurisdiction.

(b) *Withdrawal of services after certification of an appeal*—(1) *Applicability.* The restrictions on a representative's right to withdraw contained in this paragraph apply only to those cases in which the representative has previously agreed to act as representative in an appeal. In addition to express agreement, orally or in writing, such agreement shall be presumed if the representative makes an appearance in the case by acting on an appellant's behalf before the Board in any way after the appellant has designated the representative as such as provided in §§ 20.602 through 20.605 of this part. The preceding sentence notwithstanding, an appearance in an appeal solely to notify the Board that a designation of representation has not been accepted will not be presumed to constitute such consent.

(2) *Procedures.* After the agency of original jurisdiction has certified an appeal to the Board of Veterans' Appeals, a representative may not withdraw services as representative in the appeal unless good cause is shown

on motion. Good cause for such purposes is the extended illness or incapacitation of an agent admitted to practice before the Department of Veterans Affairs, an attorney-at-law, or other individual representative; failure of the appellant to cooperate with proper preparation and presentation of the appeal; or other factors which make the continuation of representation impossible, impractical, or unethical. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the reason why withdrawal should be permitted. Such motions should not contain information which would violate privileged communications or which would otherwise be unethical to reveal. Such motions must be filed at the following address: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The representative must mail a copy of the motion to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the motion. The appellant may file a response to the motion with the Board at the same address not later than 30 days following receipt of the copy of the motion. The appellant must mail a copy of any such response to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be made by the Chairman.

(Authority: 38 U.S.C. 5901–5904, 7105(a))

(Approved by the Office of Management and Budget under control number 2900–0085)

§ 20.609 Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *Who may charge fees for representation.* Only agents and attorneys-at-law may receive fees from claimants or appellants for their services. Recognized organizations (including their accredited representatives when acting as such) and individuals recognized pursuant to Rule 605 (§ 20.605 of this part) are not permitted to receive fees. An attorney-at-law or agent who may also be an accredited representative of a recognized organization may not receive such fees unless he or she has been properly designated as representative in accordance with Rule 603(a) or Rule 604(a) (§ 20.603(a) or § 20.604(a) of this part) in his or her individual capacity.

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, attorneys-at-law and agents may charge claimants or appellants for their services only if all of the following conditions have been met:

(1) A final decision has been promulgated by the Board of Veterans' Appeals with respect to the issue, or issues, involved;

(2) The Notice of Disagreement which preceded the Board of Veterans' Appeals decision with respect to the issue, or issues, involved was received by the agency of original jurisdiction on or after November 18, 1988; and

(3) The attorney-at-law or agent was retained not later than one year following the date that the decision by the Board of Veterans' Appeals with respect to the issue, or issues, involved was promulgated. (This condition will be considered to have been met with respect to all successor attorneys-at-law or agents acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(d) *Payment of fee by disinterested third party.* An attorney-at-law or agent may receive a fee or salary from an organization, governmental entity, or other disinterested third party for representation of a claimant or appellant even though the conditions set forth in paragraph (c) of this section have not been met.

(e) *Fees permitted.* Fees permitted under paragraph (c) for services of an attorney-at-law or agent admitted to practice before the Department of Veterans Affairs must be reasonable. They may be based on a fixed fee, hourly rate, a percentage of benefits recovered, or a combination of such bases. Factors considered in determining whether fees are reasonable include:

(1) The extent and type of services the representative performed;

(2) The complexity of the case;

(3) The level of skill and competence required of the representative in giving the services;

(4) The amount of time the representative spent on the case;

(5) The results the representative achieved, including the amount of any benefits recovered;

(6) The level of review to which the claim was taken and the level of the review at which the representative was retained;

(7) Rates charged by other representatives for similar services; and

(8) Whether, and to what extent, the payment of fees is contingent upon the results achieved.

(f) *Presumption of reasonableness.* Fees which total no more than 20 percent of any past-due benefits awarded, as defined in paragraph (h)(3) of this section, will be presumed to be reasonable.

(g) *Fee agreements.* All agreements for the payment of fees for services of attorneys-at-law and agents must be in writing and signed by both the claimant or appellant and the attorney-at-law or agent. The agreement must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and the specific terms under which the amount to be paid for the services of the attorney-at-law or agent will be determined. A copy of the agreement must be filed with the Board of Veterans' Appeals within 30 days of its execution by mailing the copy to the following address: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. (Also see paragraph (h)(4) for information concerning additional filing requirements when fees are to be paid by the Department of Veterans Affairs from past-due benefits.)

(h) *Payment of fees by Department of Veterans Affairs directly to an attorney-at-law from past-due benefits.* (1) Subject to the requirements of the other paragraphs of this section, including paragraphs (c) and (e), the claimant or appellant and an attorney-at-law may enter into a fee agreement providing that payment for the services of the attorney-at-law will be made directly to the attorney-at-law by the Department of Veterans Affairs out of any past-due benefits awarded as a result of a

successful appeal to the Board of Veterans' Appeals or an appellate court or as a result of a reopened claim before the Department following a prior denial of such benefits by the Board of Veterans' Appeals or an appellate court. Such an agreement will be honored by the Department only if the following conditions are met:

(i) The total fee payable (excluding expenses) does not exceed 20 percent of the total amount of the past-due benefits awarded,

(ii) The amount of the fee is contingent on whether or not the claim is resolved in a manner favorable to the claimant or appellant, and

(iii) The award of past-due benefits results in a cash payment to a claimant or an appellant from which the fee may be deducted. (An award of past-due benefits will not always result in a cash payment to a claimant or an appellant. For example, no cash payment will be made to military retirees unless there is a corresponding waiver of retirement pay. (See 38 U.S.C. 5304(a) and § 3.750 et seq. of this chapter.))

(2) For purposes of this paragraph, a claim will be considered to have been resolved in a manner favorable to the claimant or appellant if all or any part of the relief sought is granted.

(3) For purposes of this paragraph, "past-due benefits" means a nonrecurring payment resulting from a benefit, or benefits, granted on appeal or awarded on the basis of a claim reopened after a denial by the Board of Veterans' Appeals or the lump sum payment which represents the total amount of recurring cash payments which accrued between the effective date of the award, as determined by applicable laws and regulations, and the date of the grant of the benefit by the agency of original jurisdiction, the Board of Veterans' Appeals, or an appellate court.

(i) When the benefit granted on appeal, or as the result of the reopened claim, is service connection for a disability, the "past-due benefits" will be based on the initial disability rating assigned by the agency of original jurisdiction following the award of service connection. The sum will equal the payments accruing from the effective date of the award to the date of the initial disability rating decision. If an increased evaluation is subsequently granted as the result of an appeal of the disability evaluation initially assigned by the agency of original jurisdiction, and if the attorney-at-law represents the claimant or appellant in that phase of the claim, the attorney-at-law will be paid a supplemental payment at the time that the appellant is paid retroactive benefits based upon the increase granted on appeal, to the extent that the increased amount of disability is found to have existed between the initial effective date of the award following the grant of service connection and the date of the rating action implementing the appellate decision granting the increase.

(ii) Unless otherwise provided in the fee agreement between the claimant or appellant and the attorney-at-law, the attorney-at-law's fees will be determined on the basis of the total amount of the past-due benefits even though a portion of those benefits may have been apportioned to the claimant's or appellant's dependents.

(iii) If an award is made as the result of favorable action with respect to several issues, the past-due benefits will be calculated only on the basis of that portion of the award which results from action taken on issues concerning which the criteria in paragraph (c) of this section have been met.

(4) In addition to filing a copy of the fee agreement with the Board of Veterans' Appeals as required by paragraph (g) of this section, the attorney-at-law must notify the agency of original jurisdiction within 30 days of the date of execution of the agreement of the existence of an agreement providing for the direct payment of fees out of any benefits subsequently determined to be past due and provide that agency with a copy of the fee agreement. Payment of the attorney's share of any past due benefits will be made at the same time that any such benefits are paid to the claimant or appellant.

(i) *Motion for review of fee agreement.* The Board of Veterans' Appeals may review a fee agreement between a claimant or appellant and an attorney-at-law or agent upon its own motion or upon the motion of any party to the agreement and may order a reduction in the fee called for in the agreement if it finds that the fee is excessive or unreasonable in light of the standards set forth in paragraph (e) of this section. Such motions must be in writing and must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. Such motions must set forth the reason, or reasons, why the fee called for in the agreement is excessive or unreasonable. Such motions (other than motions by the Board) must be filed at the following address: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. They should be accompanied by all such evidence as the moving party desires to submit. The moving party must mail a copy of the motion and accompanying evidence to all other parties to the agreement, with return receipts requested. The receipts, which must bear the signatures of the other parties, must then be filed with the Board at the same address as proof of service of the motion. The other parties may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. A copy of any such response and any accompanying evidence must be mailed to the moving party, with a return receipt requested. The receipt, which must bear the signature of the moving party, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion. If a reduction in the fee is ordered, the attorney or agent must credit the account of the claimant or appellant with the amount of the reduction and refund any excess payment on account to the claimant or appellant not later than the expiration of the time within which the ruling may be appealed to the Court of Veterans Appeals. Failure to do so may result in proceedings under § 14.633 of this chapter to terminate the attorney's or agent's right to practice before the Department of Veterans Affairs and the Board of Veterans' Appeals and/or prosecution under the provisions of 38 U.S.C. 5905.

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900–0065)

§ 20.610 Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.

(a) *Applicability of rule.* The provisions of this section apply to the services of representatives with respect to benefits under laws administered by the Department of Veterans Affairs in all proceedings before Department of Veterans Affairs field personnel or before the Board of Veterans' Appeals regardless of whether an appeal has been initiated.

(b) *General.* Any representative may be reimbursed for expenses incurred on behalf of a veteran or a veteran's

dependents or survivors in the prosecution of a claim for benefits pending before the Department of Veterans Affairs. Whether such a representative will be reimbursed for expenses and the method of such reimbursement is a matter to be determined by the representative and the claimant or appellant. Expenses are not payable directly to the representative by the Department of Veterans Affairs out of benefits determined to be due to a claimant or appellant. Unless required in conjunction with a motion for the review of expenses filed in accordance with paragraph (d) of this section, agreements for the reimbursement of expenses need not be filed with the Department of Veterans Affairs or the Board of Veterans' Appeals.

(c) *Nature of expenses subject to reimbursement.* "Expenses" include nonrecurring expenses incurred directly in the prosecution of a claim for benefits upon behalf of a claimant or appellant. Examples of such expenses include expenses for travel specifically to attend a hearing with respect to a particular claim, the cost of copies of medical records or other documents obtained from an outside source, the cost of obtaining the services of an expert witness or an expert opinion, etc. "Expenses" do not include normal overhead costs of the representative such as office rent, utilities, the cost of obtaining or operating office equipment or a legal library, salaries of the representative and his or her support staff, the cost of office supplies, etc.

(d) *Expense charges permitted—motion for review of expenses.* Reimbursement for the expenses of a representative may be obtained only if the expenses are reasonable. The Board of Veterans' Appeals may review expenses charged by a representative upon the motion of the claimant or appellant and may order a reduction in the expenses charged if it finds that they are excessive or unreasonable. Such motions must be in writing. They must include the name of the veteran, the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. They must specifically identify which expenses charged are felt to be unreasonable and the reason, or reasons, why the amount of the expenses is felt to be excessive or unreasonable. Such motions must be filed at the following address: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue NW., Washington, DC 20420. They should be accompanied by all such evidence as the moving party desires to submit. The appellant or claimant, as applicable, must mail a copy of the motion and any accompanying evidence to the representative, with a return receipt requested. The receipt, which must bear the signature of the representative or an employee of the representative, must then be filed with the Board at the same address as proof of service of the motion. The representative may file a response to the motion, with any accompanying evidence, with the Board at the same address not later than 30 days following the date of receipt of the copy of the motion. The representative must mail a copy of any such response and any accompanying evidence to the appellant, with a return receipt requested. The receipt, which must bear the signature of the appellant, must then be filed with the Board at the same address as proof of service of the response. The ruling on the motion will be by the Chairman. Factors considered in determining whether expenses are excessive or unreasonable include the complexity of the case, the potential extent of benefits recoverable, whether travel expenses are in keeping with expenses normally incurred by other representatives, etc. Once there has been a ruling on the motion, an order shall issue which will constitute the final decision of the Board with respect to the motion.

(Authority: 38 U.S.C. 5904)

(Approved by the Office of Management and Budget under control number 2900–0085)

§ 20.611 Rule 611. Continuation of representation following death of a claimant or appellant.

A recognized organization, attorney, agent, or person properly designated to represent a claimant or appellant will be recognized as the representative of his or her survivors for a period of one year following the death of the claimant or appellant. A representative may also continue to act with respect to any appeal pending upon the death of the claimant or appellant until such time as a final decision has been promulgated by the Board of Veterans' Appeals. The provisions of this section do not apply to any survivor who has appointed another representative in accordance with these rules or who has indicated in writing that he or she does not wish to be represented by the claimant's or appellant's representative. Written notice that a survivor does not wish to be represented by the claimant's or appellant's representative will be effective when received by the agency of original jurisdiction or, if the case has been certified to the Board for appellate review, by the Board of Veterans' Appeals.

(Authority: 38 U.S.C. 5902–5904)

§§ 20.612–20.699 [Reserved]

Subpart H—Hearings on Appeal

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to appear in person.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue. It is contemplated that the appellant and witnesses, if any, will be present. A personal hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with paragraph (d) of this section. Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member of the hearing panel involved.

(c) *Nonadversarial proceedings.* Hearings conducted by and for the Board are ex parte in nature and nonadversarial. Parties to the hearing will be permitted to ask questions, including follow-up questions, of all witnesses but cross-examination will not be permitted. Proceedings will not be limited by legal rules of evidence, but reasonable bounds of relevancy and materiality will be maintained. The presiding Member may set reasonable time limits for the presentation of argument and may exclude documentary evidence, testimony, and/or argument which is not relevant or material to the issue, or issues, being considered or which is unduly repetitious.

(d) *Informal hearings.* This term is used to describe situations in which the appellant cannot, or does not wish to, appear. In the absence of the appellant, the authorized representative may present oral arguments, not exceeding 30 minutes in length, to the Board on an audio cassette without personally appearing before a Board of Veterans' Appeals hearing panel. These arguments will be transcribed by Board personnel for subsequent review by the panel

members. This procedure will not be construed to satisfy an appellant's request to appear in person.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.701 Rule 701. Who may present oral argument.

Only the appellant and/or his or her authorized representative may appear and present argument in support of an appeal. At the request of an appellant, a Veterans Benefits Counselor of the Department of Veterans Affairs may present the appeal at a hearing before the Board of Veterans' Appeals or before Department of Veterans Affairs field personnel acting for the Board.

(Authority: 38 U.S.C. 7102, 7104(a), 7105)

§ 20.702 Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.

(a) *General.* To the extent that officials scheduling hearings for or on behalf of the Board of Veterans' Appeals determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. While a Statement of the Case should be prepared prior to the hearing, it is not a prerequisite for a hearing and an appellant may request that the hearing be scheduled prior to issuance of the Statement of the Case.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

(c) *Requests for changes in hearing dates.* (1) The appellant or the representative may request a different date for the hearing within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier. The request must be in writing, but the grounds for the request need not be stated. Only one such request for a change of the date of the hearing will be granted, subject to the interests of other parties if a simultaneously contested claim is involved. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, such requests for a new hearing date must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the requests must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(2) After the period described in paragraph (c)(1) of this section has passed, or after one change in the hearing date is granted based on a request received during such period, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties if a simultaneously contested claim is involved. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. An adverse determination by the agency of original jurisdiction as to whether good cause for postponement has been shown is an appealable issue. In the case of a hearing conducted by the Board of Veterans' Appeals in Washington, DC, whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member of the hearing panel assigned to conduct the hearing. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion for a new hearing date must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7105A)

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear must be in writing; must be submitted not more than 15 days following the original hearing date; and must set forth the reason, or reasons, for the failure to appear at the originally scheduled hearing and the reason, or reasons, why a timely request for postponement could not have been submitted. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the motion must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the motion must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. An adverse determination by the agency of original jurisdiction as to whether good cause for failure to appear has been shown is an appealable issue. In the case of hearings before the Board of Veterans' Appeals in Washington, DC, whether good cause for such failure to appear has been established will be determined by the presiding Member of the hearing panel to which the case was assigned.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7105A)

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. In the case of hearings to be conducted by the Board of Veterans' Appeals in Washington, DC, the notice of withdrawal must be

sent to: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings conducted for the Board by agency of original jurisdiction personnel, the notice must be sent to the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

(Approved by the Office of Management and Budget under control number 2900–0085)

§ 20.703 Rule 703. When right to Travel Board hearing arises.

A Travel Board hearing is a "hearing on appeal". Accordingly, there is no right to a hearing before a traveling Section of the Board until such time as a Notice of Disagreement has been filed. Any request for such a hearing filed with a Notice of Disagreement, or filed subsequent to the filing of a Notice of Disagreement, will be accepted by the agency of original jurisdiction. Requests for such hearings before a Notice of Disagreement has been filed, or after the Board has entered a final decision in the case on the issue (or issues) appealed will be rejected, except for requests for such hearings after a Notice of Disagreement has been filed appealing a denial of benefits in a reopened claim which followed a prior Board decision or after a motion for reconsideration of a prior Board decision has been granted.

(Authority: 38 U.S.C. 7105(a), 7110)

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

(a) *General.* Travel Board hearings are conducted by traveling Sections of the Board of Veterans' Appeals during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. The hearings will be scheduled during such visits in the order in which requests for such hearings were received by the agency of original jurisdiction. Requests for Travel Board hearings must be submitted to the agency of original jurisdiction, in writing, and should not be submitted directly to the Board of Veterans' Appeals.

(b) *Notification of hearing.* When a hearing is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a Travel Board hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the office of the official of the Department of Veterans Affairs who signed the notice of the original hearing date. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a Travel Board hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted to the presiding Member of the traveling Section for review when the traveling Section of the Board arrives at the agency of original jurisdiction to conduct Travel Board hearings. If the presiding Member does not concur with the determination that good cause has not been shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled Travel Board hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled Travel Board hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Travel Board Secretary (0141F1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the failure to appear has been removed. Whether good cause for such failure to appear has been established will be determined by the presiding Member of the traveling Section of the Board. If good cause is shown, the Travel Board hearing will be rescheduled for the next available Travel Board hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of Travel Board hearing requests.* A request for a Travel Board hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a Travel Board hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be forwarded to the office of the Department of Veterans Affairs official who signed the notice of the hearing date.

(Authority: 38 U.S.C. 7104(a), 7110)

(Approved by the Office of Management and Budget under control number 2900–0085)

§ 20.705 Rule 705. Where hearings on appeal are conducted.

(a) *General.* A hearing on appeal may be held in one of the following places at the option of the appellant:

(1) Before a Section of the Board of Veterans' Appeals in Washington, DC,

(2) Before a traveling Section of the Board of Veterans' Appeals, or

(3) Before appropriate personnel in the Department of Veterans Affairs facility having original jurisdiction over the claim at issue, acting as a hearing agency for the Board of Veterans' Appeals. Personnel conducting such hearings as agents for the Board of Veterans' Appeals will allow the appellant and/or representative to present any argument and testimony, as well as any witnesses before the panel, subject to the exclusion of testimony, documentary evidence, and/or argument which is not relevant or material to the issues being considered or which is unduly repetitious. Rule 706 (§ 20.706 of this part) and Rules 709 through 713 (§§ 20.709–20.713 of this part) are applicable to such hearings.

(b) *Request for hearing at an alternate Department of Veterans Affairs field facility.* If the appellant desires a hearing before Department of Veterans Affairs personnel acting as a hearing agency for the Board of Veterans' Appeals as specified in paragraph (a)(3) of this section, but resides within the jurisdiction of, or in closer proximity to, a Department of Veterans Affairs facility other than the one that rendered the determination at issue, the appellant may request that the hearing be conducted at the more convenient facility. That request will be granted upon the certification of the director of the second facility that that facility has appropriate physical and personnel resources, including personnel with expertise in the issues involved, available to conduct such a hearing within a reasonable period of time.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

§ 20.706 Rule 706. Functions of the presiding Member.

The presiding Member of a hearing panel is responsible for the conduct of the hearing, administration of the oath or affirmation, and for ruling on questions of procedure. The presiding Member will assure that the course of the hearing remains relevant to the issue, or issues, on appeal and that there is no cross-examination of the parties or witnesses. The presiding Member will take such steps as may be necessary to maintain good order at hearings and may terminate a hearing or direct that the offending party leave the hearing if an appellant, representative, or witness persists in disruptive behavior.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.707 Rule 707. When a hearing panel makes the final appellate decision.

(a) *Hearings in Washington, DC.* Hearings held before a Section of the Board of Veterans' Appeals in Washington, DC, are normally held before Members who will make the final decision on the appeal.

(b) *Hearings held before traveling Sections of the Board.* Hearings held before traveling Board Sections are normally held before Members who will make the final decision on the appeal unless an issue on appeal involves radiation, Agent Orange, or asbestos exposure; the case involves the reconsideration of a prior Board of Veterans' Appeals decision; or the hearing panel consists of fewer than three Members of the Board. Appeals involving radiation, Agent Orange, or asbestos exposure issues will be decided by Board Members specializing in those issues. Decisions in appeals involving reconsideration of a prior Board of Veterans' Appeals decision on the same issue, or issues, may involve Board Members in addition to those Members making up the traveling Section. An expanded reconsideration Section considering issues involving post-traumatic stress disorder or radiation, Agent Orange, or asbestos exposure will include both the traveling Section and Board Members specializing in those issues. If a Travel Board Section is comprised of fewer than three Board Members, the Chairman may assign an additional Member, or Members, to constitute a three-Member Section which will make the final decision in Washington, DC.

(Authority: 38 U.S.C. 7102, 7104(a), 7110)

§ 20.708 Rule 708. Prehearing conference.

An appellant's authorized representative may request a prehearing conference with the presiding Member of a hearing panel in order to clarify the issues to be considered at a hearing on appeal, obtain rulings on the admissibility of evidence, develop stipulations of fact, establish the length of argument which will be permitted, or take other steps which will make the hearing itself more efficient and productive. With respect to hearings to be held before Members of the Board at Washington, DC, arrangements for a prehearing conference must be made through: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Requests for prehearing conferences in cases involving hearings to be held before traveling Sections of the Board and hearings to be held before Department of Veterans Affairs personnel acting as agents for the Board must be addressed to the office of the Department of Veterans Affairs official who signed the letter giving notice of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.709 Rule 709. Procurement of additional evidence following a hearing.

If it appears during the course of a hearing that additional evidence would assist in the review of the questions at issue, the presiding Member may direct that the record be left open so that the appellant and his or her representative may obtain the desired evidence. The presiding Member will determine the period of time during which the record will stay open, considering the amount of time estimated by the appellant or representative as needed to obtain the evidence and other factors adduced during the hearing. Ordinarily, the period will not exceed 60 days, and will be as short as possible in order that appellate consideration of the case not be unnecessarily delayed.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.710 Rule 710. Witnesses at hearings.

(a) *General.* The testimony of witnesses, including appellants, will be heard. Testimony may include presentations by Members of the Congress or Congressional staff members appearing on an appellant's behalf.

(b) *Testimony under oath.* All testimony must be given under oath unless excused because of religious principles or other good cause. If the witness declines to take an oath, he or she must be informed that testimony will be permitted on affirmation. The witness must then be requested to make a solemn declaration as to the truth of the testimony about to be given. The witness may use such words as he or she considers binding on his or her conscience. Administration of the oath for the sole purpose of presenting contentions and argument is not required.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.711 Rule 711. Subpoenas.

(a) *General.* An appellant, or his or her representative, may arrange for the production of any tangible evidence or the voluntary appearance of any witnesses desired. When necessary evidence cannot be obtained in any other reasonable way, the appellant, or his or her representative, may move that a subpoena be issued to compel the attendance of witnesses residing within 100 miles of the place where a hearing on appeal is to be held and/or to compel the production of tangible evidence. A subpoena will not be issued to compel the attendance of Department of Veterans Affairs adjudicatory personnel.

(b) *Contents of motion for subpoena.* The motion for a subpoena must be in writing, must clearly show the name and address of each witness to be subpoenaed, must clearly identify all documentary or other tangible evidence to be produced, and must explain why the attendance of the witness and/or the production of the tangible evidence cannot be obtained without a subpoena.

(c) *Where motion for subpoena is to be filed.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, motions for a subpoena must be filed with the Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In those cases

where the appellate record has not been transferred to the Board, such motions must be filed with the Director of the Department of Veterans Affairs facility where the appellate record is located.

(d) *When motion for subpoena is to be filed in cases involving a hearing on appeal.* Motions for the issuance of a subpoena for the attendance of a witness, or the production of documents or other tangible evidence, at a hearing on appeal must be filed not later than 30 days prior to the hearing date.

(e) *Ruling on motion for subpoena.* In cases in which the appellate record has been transferred to the Board of Veterans' Appeals in Washington, DC, the ruling on the motion will be made by the Chairman. In those cases where the appellate record has not been transferred to the Board, the ruling on the motion will be made by the Director of the Department of Veterans Affairs facility where the appellate record is located. In cases where the production of documents or other tangible evidence is sought, the granting of the motion may be conditioned upon the advancement by the appellant of the reasonable cost of producing the books, papers, documents, or other tangible evidence requested. The question of whether denial of a motion for a subpoena by a Director of a Department of Veterans Affairs facility was proper may be appealed as a part of the overall appeal, but is not subject to a separate interlocutory appeal.

(f) *Fees.* Any person who is required to attend a hearing as a witness shall be allowed and paid the same fees and mileage as are paid witnesses in the district courts of the United States. A subpoena will not be served unless that party on whose behalf the subpoena is issued delivers a check in an amount equal to the fee for one day's attendance and the mileage allowed by law, made payable to the witness, to the official issuing the subpoena. Except for checks on the business accounts of attorneys-at-law, agents, and recognized service organizations, such checks must be in the form of certified checks or cashiers checks.

(g) *Service of subpoenas.* The official issuing the subpoena will serve the subpoena by certified mail, return receipt requested. The check for fees and mileage described in paragraph (f) of this section shall be mailed with the subpoena. The receipt, which must bear the signature of the witness or of the custodian of the tangible evidence, and a copy of the subpoena will be filed in the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder.

(h) *Motion to quash or modify subpoena.* If an individual served with a subpoena considers the subpoena to be unreasonable or oppressive, he or she may move that the subpoena be quashed or modified. Such motions must be in writing and must explain why the subpoena is unreasonable or oppressive and what relief is sought. Such motions must be filed with the office of the official who issued the subpoena not more than 10 days following receipt of the subpoena. Rulings on such motions will be made by the official who issued the subpoena, who will inform all interested parties of the ruling in writing. The quashing of any subpoena shall be conditional upon the return of the check for fees and mileage to the party on whose behalf the subpoena was issued. The question of whether the ruling by a Director of a Department of Veterans Affairs facility on a motion to quash or modify a subpoena was proper may be appealed as a part of the overall appeal, but is not subject to a separate interlocutory appeal.

(Authority: 38 U.S.C. 5711, 7102(c), 7104(a))

§ 20.712 Rule 712. Expenses of appellants, representatives, and witnesses incident to hearings not reimbursable by the Government.

No expenses incurred by an appellant, representative, or witness incident to attendance at a hearing may be paid by the Government.

(Authority: 38 U.S.C. 111)

§ 20.713 Rule 713. Hearings in simultaneously contested claims.

(a) *General.* If a hearing is scheduled for any party to a simultaneously contested claim, the other contesting claimants and their representatives, if any, will be notified and afforded an opportunity to be present. The appellant will be allowed to present opening testimony and argument. Thereafter, any other contesting party who wishes to do so may present testimony and argument. The appellant will then be allowed an opportunity to present testimony and argument in rebuttal. Cross-examination will not be allowed.

(b) *Requests for changes in hearing dates.* Any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 702, paragraph (c) (§ 20.702(c) of this part), or Rule 704, paragraph (c) (§ 20.704(c) of this part), as applicable. In order to obtain a new hearing date under the provisions of Rule 702, paragraph (c)(1), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, paragraph (c)(2) of that rule will apply even though the request is submitted within 60 days from the date of the letter of notification of the time and place of the hearing. A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(Authority: 38 U.S.C. 7105A)

§ 20.714 Rule 714. Record of hearing.

(a) *Board of Veterans' Appeals.* A hearing before Members of the Board, whether held in Washington, DC, or before a traveling Section, will be recorded on audio tape. In those instances where a complete written transcript is prepared, that transcript will be the official record of the hearing and the tape recording will be retained at the Board for a period of 12 months following the date of the hearing as a duplicate record of the hearing. Tape recordings of hearings that have not been transcribed will be maintained by the Board as the official record of hearings and retained in accordance with retention standards approved by the National Archives and Records Administration. A transcript will be prepared and incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder if one or more of the following conditions have been met:

(1) The appellant or representative has shown good cause why such a written transcript should be prepared. (The presiding Member of the hearing panel will determine whether good cause has been shown. Requests that recordings of hearing proceedings be transcribed may be made orally at the time of the hearing. Requests made subsequent to the hearing must be in writing and must explain why transcription is necessary. They must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.)

(2) Testimony and/or argument has been presented at the hearing pertaining

to an issue which is to be remanded to the agency of original jurisdiction for further development or an issue which is not in appellate status which is to be referred to the agency of original jurisdiction for consideration.

(3) The hearing involves an issue relating to National Service Life Insurance or United States Government Life Insurance.

(4) With respect to hearings conducted by a traveling Section of the Board:

(i) An issue on appeal involves radiation, Agent Orange, or asbestos exposure;

(ii) The appeal involves reconsideration of a prior Board of Veterans' Appeals decision on the same issue; or

(5) The Board's decision on an issue addressed at the hearing has been appealed to the United States Court of Veterans Appeals.

(b) *Field offices.* The hearing proceedings before field office personnel after the filing of a Notice of Disagreement will be recorded and a copy of the complete written transcript incorporated as a part of the claims folder, loan guaranty folder, or other applicable Department of Veterans Affairs records folder as the official record of the hearing.

(c) *Copy of hearing tape recording or written transcript.* One copy of the tape recording of hearing proceedings before the Board of Veterans' Appeals, or the written transcript of such proceeding when such a transcript has been prepared in accordance with the provisions of paragraph (a) of this section, and/or a copy of the written transcript of field office appellate hearing proceedings shall be furnished without cost to the appellant or representative if a request is made in accordance with § 1.577 of this chapter.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.715 Rule 715. Recording of hearing by appellant or representative.

An appellant or representative may record the hearing with his or her own equipment. Filming, videotaping or televising the hearing may only be authorized when prior written consent is obtained from all appellants and contesting claimants, if any, and made a matter of record. In no event will such additional equipment be used if it interferes with the conduct of the hearing or the official recording apparatus. In all such situations, advance arrangements must be made. In the case of hearings held before Members of the Board of Veterans' Appeals in Washington, DC, arrangements must be made with the Chief of the Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before traveling Sections of the Board or before Department of Veterans Affairs personnel acting as agents for the Board, arrangements must be made through the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a))

§ 20.716 Rule 716. Correction of hearing transcripts.

The tape recording on file at the Board of Veterans' Appeals or a transcript prepared by the Board of Veterans' Appeals or by Department of Veterans Affairs personnel acting as agents for the Board is the only official record of a hearing on appeal. Alternate transcript versions prepared by the appellant and representative will not be accepted. If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for the correction of the hearing transcript within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. In the case of hearings held before Members of the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with the Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing. The ruling on the motion will be made by the presiding Member of the hearing panel concerned.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

§ 20.717 Rule 717. Loss of hearing tapes or transcripts—motion for new hearing.

(a) *Motion for new hearing.* In the event that a hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available, an appellant or his or her representative may move for a new hearing. The motion must be in writing and must specify why prejudice would result from the failure to provide a new hearing.

(b) *Time limit for filing motion for a new hearing.* The motion will not be granted if there has been no request for a new hearing within a period of 120 days from the date of a final Board of Veterans' Appeals decision or, in cases appealed to the United States Court of Veterans Appeals, if there has been no request for a new hearing within a reasonable period of time after the appeal to that Court has been filed.

(c) *Where motion for a new hearing is filed.* In the case of hearings held before Members of the Board of Veterans' Appeals, whether in Washington, DC, or in the field, the motion must be filed with: Chief, Hearing Section (014B), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. In the case of hearings held before Department of Veterans Affairs personnel acting as agents for the Board, the motion must be filed with the office of the Department of Veterans Affairs official who signed the letter giving notification of the time and place of the hearing unless the appellant has received notice that the case has been transferred to the Board of Veterans' Appeals for appellate review or unless a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question. In such cases, the motion must be filed with the Board at the address specified herein.

(d) *Ruling on motion for a new hearing.* Except as noted hereinafter, the ruling on the motion for a new hearing will be made by the presiding Member of the hearing panel concerned. If the presiding Member of the hearing panel is no longer available, the ruling on the motion may be made by any other member of the hearing panel who is available. In cases in which a hearing was held before Department of Veterans Affairs personnel acting as agents for the Board and the appellate record has been transferred to the Board of Veterans' Appeals for appellate review, or in which a final Board of Veterans' Appeals decision has already been promulgated with respect to the appeal in question, the ruling on the motion will be by the Chairman of the Board. Factors to be considered in ruling on the motion include, but will not be limited to, the extent of the loss of the record in those cases where only a portion of a hearing tape is unintelligible or only a portion of a transcript has been lost or destroyed, and the extent and reasonableness of any delay in moving for a new hearing. If a new hearing is granted in a case in which a final Board

of Veterans' Appeals decision has already been promulgated, a supplemental decision will be issued.

(Authority: 38 U.S.C. 7102, 7104(a), 7105(a), 7110)

§§ 20.718-20.799 [Reserved]

Subpart I—Evidence

§ 20.800 Rule 800. Submission of additional evidence after initiation of appeal.

Subject to the limitations set forth in Rule 1304 (§ 20.1304 of this part), an appellant may submit additional evidence, or information as to the availability of additional evidence, after initiating an appeal.

(Authority: 38 U.S.C. 7105(d)(1))

§§ 20.801-20.899 [Reserved]

Subpart J—Action by the Board

§ 20.900 Rule 900. Order of consideration of appeals.

(a) *Docketing of appeals.* Applications for review on appeal are docketed in the order in which they are received. Cases returned to the Board following action pursuant to a remand assume their original places on the docket.

(b) *Appeals considered in docket order.* Appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket.* A case may be advanced on the docket if it involves an interpretation of law of general application affecting other claims or for other good cause. Examples of such good cause include terminal illness, extreme hardship which might be relieved in whole or in part if the benefits sought on appeal were granted, etc. Advancement on the docket is requested by motion. Such motions must be in writing and must identify the law of general application affecting other claims or other good cause involved. They must also include the name of the veteran, the name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (O14), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(Authority: 38 U.S.C. 7107)

§ 20.901 Rule 901. Medical opinions and opinions of the General Counsel.

(a) *Opinion of the Chief Medical Director.* The Board may obtain a medical opinion from the Chief Medical Director of the Veterans Health Administration of the Department of Veterans Affairs on medical questions involved in the consideration of an appeal when, in its judgment, such medical expertise is needed for equitable disposition of an appeal.

(Authority: 38 U.S.C. 5107(a))

(b) *Armed Forces Institute of Pathology opinions.* The Board may refer pathologic material to the Armed Forces Institute of Pathology and request an opinion based on that material.

(Authority: 38 U.S.C. 7109(a))

(c) *Opinion of the General Counsel.* The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(Authority: 38 U.S.C. 7104(c))

(d) *Independent medical expert opinions.* When, in the judgment of the Board, additional medical opinion is warranted by the medical complexity or controversy involved in an appeal, the Board may obtain an advisory medical opinion from one or more medical experts who are not employees of the Department of Veterans Affairs. Opinions will be secured, as requested by the Chairman of the Board, from recognized medical schools, universities, clinics, or medical institutions with which arrangements for such opinions have been made by the Secretary of Veterans Affairs. An appropriate official of the institution will select the individual expert, or experts, to give an opinion.

(Authority: 38 U.S.C. 7109)

(e) For purposes of this section, the term "the Board" includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of a Section of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7104(c), 7109)

§ 20.902 Rule 902. Filing of requests for the procurement of opinions.

The appellant or representative may request that the Board obtain an opinion under Rule 901 (§ 20.901 of this part). The request must be in writing. It will be granted upon a showing of good cause, such as the identification of a complex or controversial medical or legal issue involved in the appeal which warrants such an opinion.

(Authority: 38 U.S.C. 5107(a), 7102(c), 7104(c), 7109)

§ 20.903 Rule 903. Notification of opinions secured by the Board and opportunity for response.

When an opinion is requested by the Board pursuant to Rule 901 (§ 20.901 of this part), the Board will notify the appellant and his or her representative, if any. When the opinion is received by the Board, a copy of the opinion will be furnished to the appellant's representative or, subject to the limitations provided in 38 U.S.C. 5701(b)(1), to the appellant if there is no representative. A period of 60 days from the date of mailing of a copy of the opinion will be allowed for response. The date of mailing will be presumed to be the same as the date of the letter or memorandum which accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(Authority: 38 U.S.C. 7109(c))

§ 20.904 Rule 904. Vacating a decision.

An appellate decision may be vacated by the Board of Veterans' Appeals at any time upon request of the appellant or his or her representative, or on the Board's own motion, on the following grounds:

(a) *Denial of due process.* Examples of circumstances in which denial of due process of law will be conceded are:

(1) When the appellant was denied his or her right to representation through action or inaction by Department of Veterans Affairs or Board of Veterans' Appeals personnel,

(2) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(3) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.)

(b) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined on reconsideration that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated only with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(Authority: 38 U.S.C. 7104(a))

§§ 20.905–20.999 [Reserved]

Subpart K—Reconsideration

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision may be accorded at any time by the Board of Veterans' Appeals on motion by the appellant or his or her representative or on the Board's own motion:

(a) Upon allegation of obvious error of fact or law;

(b) Upon discovery of new and material evidence in the form of relevant records or reports of the service department concerned; or

(c) Upon allegation that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant.

(Authority: 38 U.S.C. 7103, 7104)

§ 20.1001 Rule 1001. Filing and disposition of motion for reconsideration.

(a) *Application requirements.* A motion for Reconsideration must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and the date of the Board of Veterans' Appeals decision, or decisions, to be reconsidered. It must also set forth clearly and specifically the alleged obvious error, or errors, of fact or law in the applicable decision, or decisions, of the Board or other appropriate basis for requesting Reconsideration. If the applicable Board of Veterans' Appeals decision, or decisions, involved more than one issue on appeal, the motion for reconsideration must identify the specific issue, or issues, to which the motion pertains. Issues not so identified will not be considered in the disposition of the motion.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a prior Board of Veterans' Appeals decision may be filed at any time. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420.

(c) *Disposition.* The Chairman will review the sufficiency of the allegations set forth in the motion and, depending upon the decision reached, proceed as follows:

(1) *Motion denied.* The appellant and representative or other appropriate party will be notified if the motion is denied. The notification will include reasons why the allegations are found insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the appellant and his or her representative, if any, will be notified. The appellant and the representative will be given a period of 60 days from the date of mailing of the letter of notification to present additional arguments or evidence. The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification. The Chairman will assign a Reconsideration panel in accordance with § 19.11 of this chapter.

(Authority: 38 U.S.C. 7103, 7108)

§ 20.1002 Rule 1002. [Reserved]

§ 20.1003 Rule 1003. Hearings on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if an appellant desires to appear in person. A personal hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument should be submitted in the form of a written brief. Oral argument may also be submitted on audio cassette for transcription for the record in accordance with Rule 700(d) (§ 20.700(d) of this part.). Requests for appearances by representatives alone to personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member of the hearing panel involved.

(Authority: 38 U.S.C. 7102, 7103, 7104(a), 7105(a))

§§ 20.1004–20.1099 [Reserved]

Subpart L—Finality

§ 20.1100 Rule 1100. Finality of decisions of the Board.

(a) *General.* All decisions of the Board are by majority decision and will be stamped with the date of mailing on the face of the decision. Unless the Chairman of the Board orders reconsideration, and with the exception of matters listed in paragraph (b) of this section, all Board decisions are final on the date stamped on the face of the decision. With the exception of matters listed in paragraph (b) of this section, the decision rendered by the reconsideration Section in an appeal in which the Chairman has ordered reconsideration is final.

(b) *Exceptions.* Final Board decisions are not subject to review except as provided in 38 U.S.C. 1975 and 1984 and 38 U.S.C. chapters 37 and 72. A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(Authority: 38 U.S.C. 511(a), 7103, 7104(a))

§ 20.1101 Rule 1101. [Reserved]

§ 20.1102 Rule 1102. Harmless error.

An error or defect in any decision by the Board of Veterans' Appeals which does not affect the merits of the issue or substantive rights of the appellant will be considered harmless and not a basis for vacating or reversing such decision.

(Authority: 38 U.S.C. 7103)

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where appeal is not perfected.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in Rule 302 (§ 20.302 of this part).

(Authority: 38 U.S.C. 7105)

§ 20.1104 Rule 1104. Finality of determinations of the agency of original jurisdiction affirmed on appeal.

When a determination of the agency of original jurisdiction is affirmed by the Board of Veterans' Appeals, such determination is subsumed by the final appellate decision.

(Authority: 38 U.S.C. 7104(a))

§ 20.1105 Rule 1105. New claim after promulgation of appellate decision.

When a claimant requests that a claim be reopened after an appellate decision has been promulgated and submits evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 5108, 7104)

§ 20.1106 Rule 1106. Claim for death benefits by survivor—prior unfavorable decisions during veteran's lifetime.

Except with respect to benefits under the provisions of 38 U.S.C. 1318 and certain cases involving individuals whose Department of Veterans Affairs benefits have been forfeited for treason or for subversive activities under the provisions of 38 U.S.C. 6104 and 6105, issues involved in a survivor's claim for death benefits will be decided without

regard to any prior disposition of those issues during the veteran's lifetime.

(Authority: 38 U.S.C. 7104(b))

§§ 20.1107–20.1199 [Reserved]

Subpart M—Privacy Act

§ 20.1200 Rule 1200. Privacy Act request—appeal pending.

When a Privacy Act request is filed under § 1.577 of this chapter by an individual seeking records pertaining to him or her and the relevant records are in the custody of the Board, such request will be reviewed and processed prior to appellate action on that individual's appeal.

(Authority: 5 U.S.C. 552a; 38 U.S.C. 7107)

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. Where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 7103, 7108)

§§ 20.1202–20.1299 [Reserved]

Subpart N—Miscellaneous

Cross-Reference: In cases involving access to patient information relating to a Department of Veterans Affairs program for, or the treatment of, drug abuse, alcoholism, alcohol abuse, sickle cell anemia, or infection with the human immunodeficiency virus, also see 38 U.S.C. 7332.

§ 20.1300 Rule 1300. Access to Board records.

(a) *Removal of records.* No original record, paper, document or exhibit certified to the Board may be taken from the Board except as authorized by the Chairman or except as may be necessary to furnish copies or to transmit copies for other official purposes.

(Authority: 38 U.S.C. 5701)

(b) *Release of information.* Information requested from records, including copies of such records in the custody of the Board of Veterans' Appeals, may be furnished to a requester only when permitted by law and in accordance with Department of Veterans Affairs regulations.

(Authority: 5 U.S.C. 552, 552a; 38 U.S.C. 5701)

(c) *Fees.* The fees to be charged and collected for the release of information and for any copies will be in accordance with §§ 1.526, 1.555, and 1.577 of this chapter.

(Authority: 38 U.S.C. 5702(b))

(d) *Waiver of fees.* When information is requested from records certified to and in the custody of the Board, the required fee may be waived if such information is requested in connection with the requestor's pending appeal.

(Authority: 38 U.S.C. 5702(b))

(e) *Review of records.* Information in the records may be reviewed by Board of Veterans' Appeals employees who have a need to do so in the performance of their duties.

(Authority: 5 U.S.C. 552a(b)(1))

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board of Veterans' Appeals for the full text of appellate decisions, Statements of the Case, and Supplemental Statements of the Case to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision, Statement of the Case, or Supplemental Statement of the Case and the remaining text will be furnished to the appellant. A full-text appellate decision, Statement of the Case, or Supplemental Statement of the Case will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(Authority: 38 U.S.C. 7105(d)(2))

(b) *Index to decisions.* The appellate decisions of the Board of Veterans' Appeals have been indexed to facilitate access to the contents of the decisions (BVA Index I–01–1). The index, which is published quarterly in microfiche form with an annual cumulation, is available for review at Department of Veterans Affairs regional offices and at the Research Center at the Board of Veterans' Appeals in Washington, DC. The index can be used to locate citations to decisions with issues similar to those of concern to an appellant. Each indexed decision has a locator number assigned to it. The manner in which the locator number is written will depend upon the age of the decision. Decisions archived prior to late 1989 will have a number such as *82–07–0001.* Decisions archived at a later date will have a number such as *BVA–90–12345.* This number must be used when requesting a paper copy of that decision. These requests must be directed to the Appellate Index and Retrieval Staff (01C1), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Microfiche copies of BVA Index I–01–1 can be obtained from Promisel and Korn, Inc., 7201 Wisconsin Avenue, suite 480, Bethesda, MD 20814.

(Authority: 5 U.S.C. 552(a)(2))

§ 20.1302 Rule 1302. Death of appellant during pendency of appeal.

When an appeal is pending before the Board of Veterans' Appeals at the time of the appellant's death, the Board may complete its action on the issues properly before it without application from the survivors.

(Authority: 38 U.S.C. 7104(a))

§ 20.1303 Rule 1303. Nonprecedential nature of Board decisions.

Although the Board strives for consistency in issuing its decisions, previously issued Board decisions will be considered binding only with regard to the specific case decided. Prior decisions in other appeals may be considered in a case to the extent that they reasonably relate to the case, but each case presented to the Board will be decided on the basis of the individual facts of the case in light of applicable procedure and substantive law.

(Authority: 38 U.S.C. 7104(a))

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant and his or her representative, if any, will be granted a period of 90 days following the mailing of notice to them that an appeal has been certified to the Board for appellate

review and that the appellate record has been transferred to the Board, or until the date the appellate decision is promulgated by the Board of Veterans' Appeals, whichever comes first, during which they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence must be submitted directly to the Board and not to the agency of original jurisdiction. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(b) *Subsequent request for a change in representation, request for a personal hearing, or submission of additional evidence.* Following the expiration of the period described in paragraph (a) of this section, the Board of Veterans' Appeals will not accept a request for a change in representation, a request for a personal hearing, or additional evidence except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; withdrawal of an individual representative; the discovery of evidence that was not available prior to the expiration of the period; and delay in transfer of the appellate record to the Board which precluded timely action with respect to these matters. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf); the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation, the request for a personal hearing, or the submission of additional evidence could not be accomplished in a timely manner. Such motions must be filed at the following address: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. The ruling on the motion will be by the Chairman. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation, the request for a personal hearing, or the additional evidence submitted will be referred to the agency of original jurisdiction upon completion of the Board's action on the pending appeal without action by the Board concerning the request or additional evidence. Any personal hearing granted as a result of a request so referred or any additional evidence so referred may be treated by that agency as the basis for a reopened claim, if appropriate. If the Board denied a benefit sought in the pending appeal and any evidence so referred which was received prior to the date of the Board's decision, or testimony presented at a hearing resulting from a request for a hearing so referred, together with the evidence already of record, is subsequently found to be the basis of an allowance of that benefit, the effective date of the award will be the same as if the benefit had been granted by the Board as a result of the appeal which was pending at the time that the hearing request or additional evidence was received.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation or for a personal hearing will be honored. Any pertinent evidence submitted by the appellant or representative will be accepted, subject to the requirements of paragraph (c) of this section and, if a simultaneously contested claim is involved, the requirements of paragraph (d) of this section.

(c) *Consideration of additional evidence by agency of original jurisdiction.* Any pertinent evidence submitted by the appellant or representative which is accepted by the Board under the provisions of this section, as well as any such evidence referred to the Board by the originating agency under § 19.37(b) of this chapter, must be referred to the agency of original jurisdiction for review and preparation of a Supplemental Statement of the Case unless this procedural right is waived by the appellant or unless the Board determines that the benefit, or benefits, to which the evidence relates may be allowed on appeal without such referral. Such waiver must be in writing or, if a hearing on appeal is conducted, formally entered on the record orally at the time of the hearing.

(d) *Simultaneously contested claims.* In simultaneously contested claims, if pertinent evidence which directly affects payment, or potential payment, of the benefit sought is submitted by any claimant and is accepted by the Board under the provisions of this section, the substance of such evidence will be mailed to each of the other claimants who will then have 60 days from the date of mailing of notice of the new evidence within which to comment upon it and/or submit additional evidence in rebuttal. The date of mailing of the letter of notification of the new evidence will be presumed to be the same as the date of that letter for purposes of determining whether such comment or evidence in rebuttal was timely submitted. No further period will be provided for response to such comment or rebuttal evidence.

(Authority: 38 U.S.C. 7104, 7105, 7105A)

Appendix A to Part 20—Cross-References

Sec.	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	*Statement of policy.*
20.100	38 CFR 20.306	*Rule 306. Legal holidays.*
20.200	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
	38 CFR 20.202	*Rule 202. Substantive Appeal.*
	38 CFR 20.300–20.306	See re filing Notices of Disagreement and Substantive Appeals.
20.202	38 CFR 19.29	*Statement of the Case.*
	38 CFR 19.31	*Supplemental Statement of the Case.*
20.301	38 CFR 20.500	*Rule 500. Who can file an appeal in simultaneously contested claims.*
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*

APPENDIX A TO PART 20—Cross-References—Continued

Sec.	Cross-reference	Title of cross-referenced material or comment
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.302	38 CFR 20.501	*Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.*
20.303	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.503	*Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.*
20.305	38 CFR 20.306	*Rule 306. Legal holidays.*
20.400	38 CFR 19.50–19.53	See also re administrative appeals.
20.401	38 CFR 19.50–19.53	See also re administrative appeals.
	38 CFR 20.302–20.306	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.501	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.502	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.503	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.504	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.600	38 CFR 14.626 et seq	See also re representation.
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.602	38 CFR 14.628	*Recognition of organizations.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.603	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.604	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.605	38 CFR 14.630	*Authorization for a particular claim.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.606	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
20.607	38 CFR 14.631(d)	See also re revocation of powers of attorney.
20.609	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.610	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.611	38 CFR 1.525(d), 14.631(e)	See also re continuation of authority conferred by powers of attorney upon the death of a claimant.
20.701	38 CFR 20.710	*Rule 710. Witnesses at hearings.*
20.702	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs facilities.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.703	38 CFR 20.201	*Rule 201. Notice of Disagreement.*

APPENDIX A TO PART 20—Cross-References—Continued

Sec.	Cross-reference	Title of cross-referenced material or comment
20.704	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.*
20.706	38 CFR 20.700(c)	See also re the presiding Member's role in the conduct of hearings.
	38 CFR 20.708	*Rule 708. Prehearing conference.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
20.707	38 CFR 19.11	*Reconsideration Section.*
20.708	38 CFR 20.606(d)	See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.
20.709	38 CFR 19.37	*Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.*
20.710	38 CFR 20.711	*Rule 711. Subpoenas.*
20.711	38 CFR 2.1	See for further information on subpoenas, including action to be taken in the event of noncompliance.
20.713	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.*
	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs facilities.*
20.715	38 CFR 20.706	*Rule 706. Functions of the presiding Member.*
20.800	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.*
20.901	38 CFR 14.507	See re opinions of the General Counsel of the Department of Veterans Affairs.
20.903	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
20.1003	38 CFR 20.700(b)	See re submission of written brief and of oral argument on audio cassette.
20.1105	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.1304(b)(1)	See re request for a personal hearing or submission of additional evidence more than 60 days after a case has been certified to the Board of Veterans' Appeals as possible basis for a reopened claim.
20.1106	38 CFR 3.22(a)(2)	See re correction of a rating, after a veteran's death, based on clear and unmistakable error, in cases involving claims for benefits under the provisions of 38 U.S.C. 1318.
20.1300	38 CFR 1.500–1.527	See re the release of information from Department of Veterans Affairs claimant records.
	38 CFR 1.550–1.559	See re the release of information from Department of Veterans Affairs records other than claimant records.
	38 CFR 1.575–1.584	See re safeguarding personal information in Department of Veterans Affairs records.
	38 CFR 20.1301	*Rule 1301. Disclosure of information.*
20.1301	38 CFR 1.577	*Access to records.*
20.1302	38 CFR 20.611	*Rule 611. Continuation of representation following death of a claimant or appellant.*
20.1304	38 CFR 3.103(c), 20.700–20.717	See also re hearings.
	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900-AE78

Appeals Regulations; Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is publishing final Appeals Regulations and Board of Veterans' Appeals Rules of Practice in a companion document in this issue of the **Federal Register**. The notice of proposed rulemaking which preceded the publication of those final regulations was published in the **Federal Register** in August 1989. (54 FR 34334) Further review of some of the originally proposed regulations, and experience which has been gained in some areas, have shown the need for further additions and revisions to some of the Appeals Regulations and Rules of Practice. This document accomplishes that purpose. This action is necessary in order to further clarify these regulations and, in some instances, to provide revised regulations which more accurately reflect current statutory authority. The intended effect of this action is to complete the thorough revision of the Appeals Regulations and Rules of Practice which began with the August 1989 publication in order to provide an efficient and equitable administrative appeal process.

DATES: Comments must be submitted on or before March 4, 1992. Comments will be available for public inspection until March 16, 1992. It is proposed to make these changes effective 30 days after the date of their final publication in the **Federal Register.**

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170 at the address above, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until March 16, 1992.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address contained in the Paperwork Reduction section of this preamble.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Counsel to the Chairman (01C), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-233-2978).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act: Section 20.1001 of this regulation contains an information collection requirement. The public reporting burden for this collection is 1 hour per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on this proposed information collection requirement should address them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Joseph F. Lackey.

The following changes have been made in part 19:

Section 19.3(a) has been restructured to include information on how temporary and acting Members of the Board of Veterans' Appeals are appointed.

Section 19.10 has been added. The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on August 27, 1990, which concluded, in essence, that statutory changes brought about by the Veterans' Judicial Review Act (Pub. L. 100-687) had the effect of eliminating "obvious error" as the standard for review after a motion for reconsideration has been granted. (See O.G.C. Precedent Opinion 69-90, 56 FR 1225) This change also eliminated the principal basis for the prior regulatory provision which, in most cases, limited the evidence which could be considered on reconsideration to that which was of record at the time that the decision being reconsidered was rendered. This amendment serves to announce that remands to obtain additional development may now be made in reconsideration cases to the same extent as in other cases.

Section 19.14(a) has been updated to include the delegation of authority to the Vice Chairman to appoint acting and temporary Board Members.

Section 19.36 has been revised to show that the notice described in that section is sent to the last known address of record of the appellant and his or her representative, if any.

Section 19.39 has been added to provide a uniform rule for the various subdivisions of the Department of Veterans Affairs generating appeals activity to follow with respect to adjudicative determinations on the same issue which intervene between a determination which has been appealed and the decision by the Board of Veterans' Appeals on that issue.

Appendix A has been updated.

The following changes have been made in part 20:

Section 20.3 has been amended to include several additional definitions. Editorial changes have been made in paragraphs (h) and (q).

Section 20.101 has been amended to include a new paragraph which describes the original jurisdiction of the Board of Veterans' Appeals with respect to the review of representatives' fee agreements.

Section 20.102(b) has been updated to reflect delegations of authority pertaining to new procedures relating to the correction of harmless error in the record under § 20.905 and to show the change in location of the rule relating to the review and disposition of motions for reconsideration from § 20.1001(c) to § 20.1002.

Section 20.201, pertaining to Notices of Disagreement, has been restructured. Paragraph (a) contains essentially the same information contained in the version of § 20.201 which has been adopted as final in a companion document published in this edition of the **Federal Register.** Additional information has been added concerning the form and content of Notices of Disagreement. Paragraph (b), which specifies that only one Notice of Disagreement is required with respect to any one issue, has been added.

Section 20.605 has also been restructured. All of the material which appears in the version of paragraph (d) of this regulation which has been adopted as final in a companion document published in this edition of the **Federal Register** has been moved to paragraph (b). Paragraph (c) has been revised to change the method of designation as representatives of individuals who are neither accredited agents, attorneys-at-law, nor employees of recognized organizations. The use of VA Form 2-22a was previously permitted for this purpose, but that form was designed for another purpose and its use is not suitable. Information about the filing of the designation which previously appeared in paragraph (c) has been moved to paragraph (d).

For many years, the Board of Veterans' Appeals implemented its

statutory authority to correct "an obvious error in the record" through its reconsideration procedures. With the passage of Public Law 100–687, the reconsideration procedure concept was codified. (38 U.S.C. 7103) However, the concept as codified conflicted with existing procedures. The General Counsel of the Department of Veterans Affairs issued a Precedent Opinion on August 27, 1990, which concluded, in essence, that statutory changes brought about by Public Law 100–687 had the effect of eliminating "obvious error" as the standard for review when a motion for reconsideration has been granted. (See O.G.C. Precedent Opinion 89–90, 56 FR 1225.) These events have prompted several changes in the Board's Rules of Practice which are described in the paragraphs which follow.

The Board will correct obvious error in the record through vacating a prior Board decision in certain circumstances and through less drastic procedures when the error was harmless. Section 20.904 has been revised to provide additional information on vacating decisions of the Board of Veterans' Appeals in whole or in part.

New § 20.905 describes how the Board will correct harmless errors in the record.

Revised § 20.1000 and new §§ 20.1001 and 20.1002 provide for new reconsideration procedures. These new procedures are analogous to a petition for rehearing in a Federal appellate court.

A motion for reconsideration, like a petition for rehearing, must now be filed within a specified period after the decision of the Board is entered. A 45-day time period has been chosen.

There has been no time limit for filing a motion for reconsideration in the past. This historical liberality was primarily due to the lack of any other means for obtaining review of decisions by the Board of Veterans' Appeals. That changed with the passage of the Veterans' Judicial Review Act (Pub. L. 100–687) in 1988. The Board is no longer the final arbiter in claims for veterans' benefits and the primary reason behind the old policy is no longer valid. The Board's decisions may now be appealed to the United States Court of Veterans Appeals (the Court).

In addition, the Court has held that when an appellant files a motion for reconsideration with the Board during the 120-day period during which an appeal of a Board decision may be filed with the Court, a new 120-day period to appeal to the Court begins to run on the date on which the Board mails notice of the denial of the motion or on the date that the Board receives notice of the withdrawal of the motion. (*Rosler* v. *Derwinski*, U.S. Vet. App. No. 90–370 (May 13, 1991)) The *Rosler* opinion notes the following:

> We are mindful that the rule we announce today might, in the words of Judge Becker in *Newark* [*Cities of Newark, New Castle and Seaford, Delaware v. FERC*, 763 F.2d 533], permit a claimant to "frustrate" the judicial review period by filing "dilatory, repetitive" motions for reconsideration. *Newark*, 763 F.2d at 542–43. This case is not presently before us and can be dealt with by the Court should such a case arise and should the Court find that the application of the tolling rule would frustrate judicial review. Alternatively, as the court noted in *Newark*, if the administrative agency is concerned about such a prospect, it can address it by regulation. *Ibid.* (Slip op. at 15.)

This regulatory change addresses the concern described. The Board's decisions need to be final and ripe for appellate review by the Court at some point in time. Under the existing procedure, since there is no limit for filing motions for reconsideration, the finality of a Board decision and the time within which an appeal must be filed with the Court could be delayed indefinitely by filing one motion for reconsideration after another as each 120-day appeal period following denial of the prior motion for reconsideration expires.

The material in the version of § 20.1100 adopted as final in the companion document in this edition of the **Federal Register** has been restructured for clarity. Material has been added concerning the procedures to be followed when a Section of the Board is unable to reach a majority decision in an appeal.

Section 20.1101, which explains exactly when decisions of the Board become final, has been added.

Material has been added to § 20.1201 to explain that action may be taken by the Board pursuant to §§ 20.904 and 20.905 when factual information has been deleted from a Board decision in accordance with a Privacy Act request for amendment of the decision.

Appendix A has been updated.

VA has determined that these proposed regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The proposed regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the proposed regulations will have only a limited effect on individual VA claimants and their representatives before the Board of Veterans' Appeals. Pursuant to 5 U.S.C. 605(b), these proposed regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with these proposed regulatory amendments.

List of Subjects

38 CFR Part 19

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: November 6, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR parts 19 and 20, are proposed to be amended as follows:

PART 19—[AMENDED]

1. In subpart A, § 19.3 is amended by revising paragraph (a) and the authority citation to paragraph (a), § 19.10 is added, and § 19.14 is amended by revising paragraph (a) and revising the authority citation to § 19.14 to read as follows:

§ 19.3 Appointment, assignment, and rotation of Members.

(a) *Appointment*— (1) *Chairman.* The Chairman is appointed by the President of the United States, by and with the advice and consent of the United States Senate.

(2) *Members other than the Chairman or temporary or acting Members.* Other members of the Board (including the Vice Chairman, but excluding acting and temporary Members) are appointed by the Secretary upon the recommendation of the Chairman with the approval of the President of the United States.

(3) *Deputy Vice Chairmen.* Deputy Vice Chairmen are Members of the Board who are appointed to the

additional office of Deputy Vice Chairman by the Secretary upon the recommendation of the Chairman.

(4) *Acting and temporary Members.* Acting and temporary Members of the Board are appointed by the Chairman in written memoranda. Acting and temporary Members are chosen from among the employees of the Board who have been licensed to practice law or medicine in a "state," as that term is defined in § 20.3 of this chapter.

(i) No temporary Member shall be appointed when there are fewer than 65 Members of the Board. Any one appointment of an individual as a temporary Member shall be for a term not exceeding one year and no individual may serve as a temporary Member of the Board for more than 24 months during any 48-month period.

(ii) Acting Members may be appointed to serve in a Section of the Board when the Section is composed of fewer than three Members as a result of the absence of a Member, a vacancy on the Board, or the inability of a Member assigned to the section to serve in that section. Any one appointment of an individual as an acting Member shall be for a term not exceeding 90 days and no individual may serve as an acting Member of the Board for more than 270 days during any 12-month period.

(iii) At any one time, a Section of the Board shall not have among its Members more than one individual who is a temporary or acting Member.

(Authority: 38 U.S.C. 501(a), 512, 7101(b), 7102(a))

* * * * *

§ 19.10 Remands in reconsideration cases.

A Section of the Board assigned to reconsider a decision of the Board pursuant to § 19.11 of this part may remand that case in accordance with § 19.9 of this part.

(Authority: 38 U.S.C. 7102, 7103, 7104(a))

§ 19.14 Delegation of authority—Appeals Regulations.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in §§ 19.3(a)(4), 19.3(b), 19.3(c), and 19.12(c) of this part may also be exercised by the Vice Chairman of the Board.

* * * * *

(Authority: 38 U.S.C. 501(a), 512(a), 7102, 7104)

2. In subpart B, § 19.36 is amended by revising its authority citation and adding a new sentence to the end of that section, and § 19.39 is added to read as follows:

§ 19.36 Notification of certification of appeal and transfer of appellate record.

* * * Service of such notice will be accomplished by mailing a copy of the notice to the appellant and to his or her representative, if any, at their last known addresses.

(Authority: 38 U.S.C. 501(a), 7105)

§ 19.39 Action to be taken by the agency of original jurisdiction when an appealed determination is modified by a subsequent determination while an appeal is pending.

(a) *Applicability.* The procedures set forth in this section will be followed by the agency of original jurisdiction when any adjudicative determination is made which modifies a prior adjudicative determination which a claimant has appealed by filing a Notice of Disagreement unless one or more of the following applies:

(1) The Notice of Disagreement has been withdrawn,

(2) The prior adjudicative determination involved several issues, some of which were appealed and some of which were not appealed, and the modification concerns an issue which was not appealed, or

(3) The Board of Veterans' Appeals has issued a final decision on the appeal.

(b) *Subsequent determination results in a lesser benefit.* When the subsequent determination results in a lesser benefit than that sought on appeal with respect to an appealed issue, normal appellate processing will continue.

(c) *All benefits sought on appeal granted.* If it is clear that all benefits sought on appeal have been granted by the subsequent determination, the appellant and his or her representative (if any) will be informed of that fact and given notice that the appeal has been closed.

(d) *Less than a complete grant of all benefits sought on appeal.* If the subsequent determination grants only a portion of the benefits sought on appeal with respect to any appealed issue, normal appellate processing will continue with respect to that issue. If more than one issue was appealed and the benefits sought on appeal were granted in full with respect to less than all of the appealed issues, the appeal will be closed with respect to the issues involving fully granted benefits and normal appellate processing will continue with respect to any remaining issue, or issues. If there is any question about whether the subsequent determination has granted all benefits sought on appeal with respect to any issue, the appellant and his or her representative, if any, will be notified of the determination and the appellant will be asked whether the action taken satisfies his or her appeal. If he or she responds in the negative, or if he or she fails to respond, normal appellate processing will continue.

(Authority: 38 U.S.C. 501(a))

3. Appendix A to part 19 is revised to read as follows:

APPENDIX A TO PART 19—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
19.5	38 CFR 14.507(b)	See re "precedent opinions" of the General Counsel of the Department of Veterans Affairs.
	38 CFR 20.1303	Rule 1303. Nonprecedential nature of Board decisions.
19.7	38 CFR 20.904	Rule 904. Vacating a decision.
19.10	38 CFR 20.1000–20.1003	See regarding reconsideration of Board of Veterans' Appeals decisions.
19.11	38 CFR 20.1000–20.1003	See regarding reconsideration of Board of Veterans' Appeals decisions.
19.13	38 CFR 2.66	Contains similar provisions.
19.25	38 CFR 19.52	Notification to claimant of filing of administrative appeal.
	38 CFR 19.100	Notification of right to appeal in simultaneously contested claims.
19.26	38 CFR 20.302	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
19.27	38 CFR 19.50–19.53	See re administrative appeals.
19.30	38 CFR 20.202	Rule 202. Substantive Appeal.
19.32	38 CFR 20.302	Rule 302. Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.
	38 CFR 20.501	Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.
19.33	38 CFR 19.50–19.53	See re administrative appeals.

APPENDIX A TO PART 19—CROSS-REFERENCES—Continued

Sec.	Cross-reference	Title of cross-referenced material or comment
19.39	38 CFR 20.1100	Finality of decisions of the Board.
	38 CFR 20.1101	When decisions of the Board become final.
19.50	38 CFR 19.53	Restriction as to change in payments pending determination of administrative appeals.
19.76	38 CFR 20.704	Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.
19.100	38 CFR 20.713	Rule 713. Hearings in simultaneously contested claims.
19.101	38 CFR 19.30	Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

PART 20—[AMENDED]

4. In subpart A, § 20.3 is amended by redesignating existing paragraphs (m) and (n) as paragraphs (q) and (r), redesignating existing paragraphs (i), (j), (k), and (l) as paragraphs (l), (m), (n), and (o), respectively, redesignating paragraph (h) as paragraph (j), and redesignating existing paragraphs (a) through (g) as paragraphs (b) through (h). New paragraphs (a), (i), (k), and (p) are added and newly designated paragraphs (h) and (q) are revised to read as follows:

§ 20.3 Rule 3. Definitions.

As used in these rules:

(a) *Accredited representative* means an employee of a recognized organization who has been accredited in accordance with the provisions of § 14.629(a) of this chapter.

* * * * *

(h) *Claimant* means a person who has filed a claim, as defined by paragraph (g) of this rule.

(i) *Decision* may have the following meanings, depending upon the context in which the term is used:

(1) The end result of the deliberative process through which the Board determines the outcome of some matter before it after consideration of applicable facts and law. Examples include determinations by the Board on controversies such as whether the Board has jurisdiction over a particular question, whether a Substantive Appeal is adequate, whether a particular benefit sought on appeal should or should not be granted, etc. (E.g., see 38 U.S.C. 7104(a) and Rules 101(c), 203 and 707 (§§ 20.101(c), 20.203 and 20.707 of this part).)

(2) The document in which the Board announces the end result of the deliberative process through which it has determined the outcome of some matter before it after consideration of applicable facts and law. (E.g., see 38 U.S.C. 7104(d) and Rules 717(b), 900(c), 1201, and 1301 (§§ 20.717(b), 20.900(c), 20.1201, and 20.1301 of this part).)

(3) Both the end result of the deliberative process through which the Board determines the outcome of some matter before it after consideration of applicable facts and law and the document in which the Board announces that result. (E.g., see 38 U.S.C. 7104(e) and Rules 904 and 1303 (§§ 20.904 and 20.1303 of this part).)

* * * * *

(k) *Issue*, unless the context otherwise requires, means the ultimate question to be decided in determining whether or not a particular benefit sought on appeal will be granted. It includes all subsidiary questions which must be resolved in reaching that determination. Examples of *issues* include whether service connection should be granted for a particular disability, whether an increased evaluation should be granted for a particular disability which is already service-connected, and whether an appellant is entitled to waiver of recovery of an indebtedness to the government.

* * * * *

(p) *Recognized organization* means an organization which has been recognized pursuant to the provisions of § 14.628 of this chapter whose principal function is to provide services to veterans and their dependents and survivors.

(q) *Simultaneously contested claim* refers to the situation in which the allowance of one claim results in the disallowance of another claim from another claimant involving the same benefit or the allowance of one claim results in the payment of a lesser benefit to another claimant.

* * * * *

5. In subpart B, § 20.101 is amended by revising the heading of paragraph (a), redesignating existing paragraph (c) as paragraph (d), adding new paragraph (c), and revising the authority at the end of the section and § 20.102 is amended by revising paragraph (b) to read as follows:

§ 20.101 Rule 101. Jurisdiction of the Board.

(a) *General appellate jurisdiction.*

* * *

* * * * *

(c) *Original jurisdiction.* The Board exercises original jurisdiction with respect to the review for reasonableness of agreements between claimants or appellants and attorneys-at-law or agents for the payment of fees for services to be performed by the attorney-at-law or agent in connection with proceedings before the Department of Veterans Affairs (38 U.S.C. 5904(c)).

* * * * *

(Authority: 38 U.S.C. 511(a), 5904(c), 7104)

§ 20.102 Rule 102. Delegation of authority—Rules of Practice.

* * * * *

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 608(b), 717(d), 905(b), and 1002 (§§ 20.608(b), 20.717(d), 20.905(b), and 20.1002 of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

* * * * *

6. In subpart C, § 20.201 and its authority citation are revised to read as follows:

§ 20.201 Rule 201. Notice of Disagreement.

(a) *Form and content.* A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement. No special format or printed form is required. A letter providing the necessary information will be sufficient. While special wording is not required, the Notice of Disagreement must be in terms which can be reasonably construed as disagreement with an adjudicative determination and a desire for appellate review. The Notice of Disagreement should also include the name of the veteran, the name of the claimant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the

specific determinations with which the claimant disagrees must be identified. For example, if service connection was denied for two disabilities and the claimant wishes to appeal the denial of service connection with respect to only one of the disabilities, the Notice of Disagreement must make that clear.

(b) *Only one Notice of Disagreement required.* Only one Notice of Disagreement is required, and only one Notice of Disagreement will be accepted, with respect to any one adjudicative determination concerning any one issue. Once a Notice of Disagreement has been filed, that Notice of Disagreement shall remain in force and shall extend to all subsequent adjudicative determinations by the agency of original jurisdiction with respect to the same issue until the first of the following has occurred:

(1) The Notice of Disagreement has been withdrawn,

(2) A Statement of the Case has been issued by the agency of original jurisdiction and the time within which the appeal must be perfected by the filing of a Substantive Appeal has expired without such filing,

(3) The full benefit sought on appeal has been granted by the agency of original jurisdiction prior to the promulgation of a final appellate decision by the Board, or

(4) A final appellate decision has been promulgated by the Board.

(Authority: 38 U.S.C. 501(a), 7105)

7. In subpart G, § 20.605 is amended by adding two sentences to the end of paragraph (b) and revising paragraphs (c) and (d) and the authority citation to § 20.605 to read as follows:

§ 20.605 Rule 605. Other persons as representative.

* * * * *

(b) * * * An individual recognized as an appellant's representative under this rule may represent only one appellant. If such an individual has been recognized as a representative for one appellant and wishes to represent another appellant, he or she must obtain permission to do so from the Office of the General Counsel as provided in § 14.630 of this chapter.

(c) *Designation.* The designation of an individual to act as an appellant's representative in accordance with this rule shall consist of a writing, which may be in the form of a letter, signed by the individual and the appellant. The writing must include the following information:

(1) The name of the veteran;

(2) The name of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf);

(3) The name of the individual representative;

(4) The applicable Department of Veterans Affairs file number;

(5) A statement to the effect that the individual agrees to represent the appellant in all proceedings before the Department of Veterans Affairs or, if representation is to be limited to representation with respect to a particular claim, a description of the specific claim for benefits to which the designation of representation applies and a statement to the effect that the individual agrees to represent the appellant in all proceedings before the Department with respect to that claim;

(6) The appellant's consent for the individual representative to have access to his or her Department of Veterans Affairs records; and

(7) A certification that no compensation will be charged or paid for the individual representative's services.

(d) *Filing and effective date of designation.* The designation must be filed with the agency of original jurisdiction or, if the appellate record has been certified and transferred to the Board of Veterans' Appeals for review, with the Board. The designation will be effective when it is received by the agency of original jurisdiction or, if the appellate record has been certified and transferred to the Board for review, by the Board of Veterans' Appeals. A properly filed designation made prior to appeal will continue to be honored, unless it has been revoked or unless the representative has properly withdrawn.

(Authority: 38 U.S.C. 501(a), 5903)

8. In subpart J, § 20.904 and its authority citation are revised and § 20.905 is added to read as follows:

§ 20.904 Rule 904. Vacating a decision.

(a) *General.* (1) This Rule, together with Rule 905 (§ 20.905 of this part), provide procedures for the correction of an obvious error in the record on the Board's own motion pursuant to 38 U.S.C. 7103(c). Requests for the correction of error from appellants and their representatives will not be entertained under this rule.

(2) An appellate decision of the Board of Veterans' Appeals may be vacated with respect to one or more issues disposed of in that decision upon the grounds specified in this rule by the Members of the Board who entered that decision at any time upon their own motion or, if none of the Members who participated in the decision are still serving as Members of the Board, upon the motion of the Chairman. The ruling on the motion to vacate the decision will be by the majority of such Members. If a majority decision can not be reached, the procedures in paragraph (c) of Rule 1100 (§ 20.1100(c) of this part) shall be followed.

(b) *Grounds.* Any of the following shall be grounds for vacating a decision under the provisions of this rule:

(1) *Denial of due process of law.* Examples of circumstances in which denial of due process of law will be conceded for purposes of a motion to vacate a prior Board decision are:

(i) When the appellant was denied his or her right to representation with respect to the matters decided through action or inaction by Department of Veterans Affairs or Board of Veterans' Appeals personnel,

(ii) When a Statement of the Case or required Supplemental Statement of the Case was not provided, and

(iii) When there was a prejudicial failure to afford the appellant a personal hearing with respect to the matters decided. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear for that hearing, the decision will not be vacated.)

(2) *Allowance of benefits based on false or fraudulent evidence.* Where it is determined that an allowance of benefits by the Board has been materially influenced by false or fraudulent evidence submitted by or on behalf of the appellant, the prior decision will be vacated with respect to the issue or issues to which, within the judgment of the Board, the false or fraudulent evidence was material.

(3) *Discovery of additional service department or Department of Veterans Affairs records.* All relevant, existing records and reports prepared by a service department at the time that a veteran served on active or inactive duty relating to such service, and all relevant, existing Department of Veterans Affairs records dated not later than 30 days prior to the date that the agency of original jurisdiction certifies the appeal and transfers the appellate record to the Board, shall be deemed to be constructively of record at the time that the Board considers an appeal. If such records, or adequate copies of extracts thereof, were not physically before the Board at the time that it entered a decision, the Board may, upon the discovery of such records, correct the decision. If the lack of such records resulted in harmless error, as defined in Rule 1102 (§ 20.1102 of this part), the

procedures in Rule 905 (§ 20.905 of this part) shall be followed. A lack of such records resulting in more than harmless error shall be grounds for vacating the decision in accordance with the provisions of this Rule. For purposes of this paragraph, "Department of Veterans Affairs records" shall not include fee basis medical treatment records.

(c) *Action taken when motion is granted.* When a motion to vacate a decision with respect to one or more issues has been granted, that action will be announced by a memorandum decision. The Chairman will then assign a Section of the Board which did not participate in the vacated decision to enter a new decision on the issue, or issues, involved. The new decision shall be made as though the original decision had never been entered. The original decision, which will remain a part of the applicable Department of Veterans Affairs records folder(s), shall be appropriately marked to show the issue(s) with respect to which it has been vacated.

(Authority: 38 U.S.C. 7103(c), 7104(a), 7105)

§ 20.905 Rule 905. Correction of harmless error in the record.

(a) *General.* This Rule, together with Rule 904 (§ 20.904 of this part), provide procedures for the correction of an obvious error in the record on the Board's own motion pursuant to 38 U.S.C. 7103(c). Requests for the correction of error from appellants and their representatives will not be entertained under this Rule.

(b) *Correction of harmless errors.* Harmless errors in a prior decision of the Board, as defined in Rule 1102 (§ 20.1102 of this part), may be corrected by the issuance of one or more corrected pages, by the issuance of a supplemental decision, or by the issuance of a complete corrected decision. The corrected page(s), supplemental decision, or corrected decision shall be signed by all Members of the Board who participated in the decision being corrected who are still serving as Members of the Board. If none of the Members of the Board who participated in the original decision being corrected are still serving as Members of the Board, the Chairman shall assign a Section of the Board to make the necessary correction(s).

(Authority: 38 U.S.C. 7103(c))

9. In subpart K, §§ 20.1000 and 20.1001 and their authority citations are revised and § 20.1002 is added to read as follows:

§ 20.1000 Rule 1000. When reconsideration is accorded.

Reconsideration of an appellate decision of the Board of Veterans' Appeals may be accorded at any time by the Chairman on the grounds set forth in Rule 1002 (§ 20.1002 of this part) upon his or her own motion, or upon the timely motion of an appellant or his or her representative filed in accordance with the provisions of Rule 1001 (§ 20.1001 of this part). Reconsideration of remands; of ancillary matters, such as rulings or orders on motions; and of decisions by Reconsideration Sections will not be granted.

(Authority: 38 U.S.C. 7103)

§ 20.1001 Rule 1001. Motion for reconsideration.

(a) *Form and content of motion.* A motion for reconsideration of a decision of the Board from an appellant or his or her representative shall be in writing, but no special format or printed form is required. A letter containing the necessary information will be sufficient. The motion must include the following:

(1) The name of the veteran and, unless he or she is deceased or his or her address is unknown, the address of the veteran;

(2) The name and address of the appellant if other than the veteran (e.g., a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf);

(3) The applicable Department of Veterans Affairs file number;

(4) The date of the decision which is the subject of the motion;

(5) If the decision involved more than one issue, the identification of the issue, or issues, with respect to which reconsideration is sought; and,

(6) As to each issue with respect to which reconsideration is sought, the grounds specified in paragraph (a) of Rule 1002 (§ 20.1002(a) of this part) which are the bases for the motion for reconsideration and the specific reasons why reconsideration is warranted on such grounds.

(b) *Filing of motion for reconsideration.* A motion for reconsideration of a decision of the Board from an appellant or his or her representative must be filed with the Board at the address which follows not later than 45 days after the date shown upon the face of the decision: Office of Counsel to the Chairman (01C), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Whether a motion is timely filed will be determined in accordance with the provisions of Rule 305 (§ 20.305 of this part). A motion for reconsideration which does not meet the requirements of this rule will not be accepted for filing.

(Authority: 38 U.S.C. 501(a), 7103)

§ 20.1002 Rule 1002. Review and disposition of motion for reconsideration.

(a) *Review.* The Chairman will review the decision of the Board which is the subject of a motion for reconsideration. When the motion is from an appellant or his or her representative, the written motion of the appellant or representative will be considered, but oral argument will not be permitted. The Chairman may order reconsideration of the decision if he or she finds any one or more of the following:

(1) That the Members of the Board who entered the decision may have overlooked or misinterpreted controlling statutory or regulatory provisions,

(2) That the Members of the Board who entered the decision may have misconstrued the record,

(3) That the finding(s) of fact or conclusion(s) of law set forth in the decision may not be supported by the evidence, or

(4) That, in the judgment of the Chairman, the decision is manifestly unjust.

(b) *Disposition*—(1) *Motion denied.* If the motion was by an appellant or his or her representative, the appellant and representative will be notified if the motion is denied. The notification will include reasons why the motion was found to be insufficient. This constitutes final disposition of the motion.

(2) *Motion allowed.* If the motion is allowed, the following actions will be accomplished:

(i) The appellant and his or her representative, if any, will be notified. They will be given a period of 60 days from the date of mailing of the letter of notification to present additional argument or evidence, or to request a hearing in accordance with the provisions of Rule 1003 (§ 20.1003 of this part). The date of mailing of the letter of notification will be presumed to be the same as the date of the letter of notification.

(ii) The Chairman will assign a Reconsideration Section in accordance with § 19.11 of this chapter and will identify for the Members of that Section the issue, or issues, addressed in the original decision which are to be reconsidered. The Reconsideration Section shall enter a new decision with respect to those issues, applying the same standard of review which was legally applicable at the time that the original decision was entered.

(3) *Motion denied in part and allowed in part.* If the motion is denied with

respect to some issues addressed in the original decision and allowed with respect to others, the notices described in paragraphs (b)(1) and (b)(2)(i) of this rule shall be combined.

(4) *Effect of allowance of motion on decision to which the motion pertains.* When a motion for reconsideration has been granted, the decision of the Board to which the motion pertains is no longer of any force and effect with respect to the issue(s) addressed in that decision which are to be reconsidered. The original decision, which will remain a part of the applicable Department of Veterans Affairs records folder(s), shall be appropriately marked to show the issue(s) which have been reconsidered.

(Authority: 38 U.S.C. 501(a), 7103)

10. In subpart L, § 20.1100 and its authority citation are revised and § 20.1101 is added to read as follows:

§ 20.1100 Finality of decisions of the Board.

(a) *General.* Subject to reconsideration, ordered in accordance with Rule 1000 (§ 20.1000 of this part), a decision by a majority of the Members of a Section of the Board is final and is not subject to review except as provided in 38 U.S.C. 1975 and 1984 and 38 U.S.C. chapters 37 and 72.

(b) *Decisions by Reconsideration Sections.* The decision of the majority of the Members of a Reconsideration Section is the final decision of the Board with respect to the issue, or issues, reconsidered.

(c) *Failure to reach a majority decision.* If a regular or Reconsideration Section of the Board fails to reach a majority decision with respect to any issue in a case assigned to it for disposition, the Chairman may assign additional Members to that Section for the purpose of disposing of such issues. The additional Members will be assigned in increments of three Members until a majority decision is reached.

(d) *Remands.* A remand is in the nature of a preliminary order and does not constitute a final decision of the Board.

(Authority: 38 U.S.C. 501(a), 511, 7102, 7103, 7104(a))

§ 20.1101 When decisions of the Board become final.

Decisions of the Board of Veterans' Appeals are promulgated and become final when signed copies of the decision are mailed to the appellant and his or her representative, if any, at their last known addresses. The date of such mailing shall be stamped upon the face of each such decision. Prior to such mailing, the decision is a draft decision which may be replaced or modified by the Members of the Board to whom the appeal was assigned, regardless of whether the decision may have been signed.

(Authority: 38 U.S.C. 501(a), 7103, 7104)

11. In subpart M, § 20.1201 is revised to read as follows:

§ 20.1201 Rule 1201. Amendment of appellate decisions.

A request for amendment of an appellate decision under the Privacy Act (5 U.S.C. 552a) may be entertained. However, such a request may not be used in lieu of, or to circumvent, the procedures established under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part). The Board will review a request for correction of factual information set forth in a decision. In any case where such factual information relied upon in a decision is deleted or amended, the Board may review the decision under Rules 904 and 905 (§§ 20.904 and 20.905 of this part) to determine whether any further action is indicated. However, where the request to amend under the Privacy Act is an attempt to alter a judgment made by the Board and thereby replace the adjudicatory authority and functions of the Board, the request will be denied on the basis that the Act does not authorize a collateral attack upon that which has already been the subject of a decision of the Board. The denial will satisfy the procedural requirements of § 1.579 of this chapter. If otherwise appropriate, the request will be considered one for reconsideration under Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part).

(Authority: 5 U.S.C. 552a(d); 38 U.S.C. 7103, 7108)

12. Appendix A to part 20 is revised to read as follows:

APPENDIX A TO PART 20—CROSS-REFERENCES

Sec.	Cross-reference	Title of cross-referenced material or comment
20.1	38 CFR 3.103(a)	*Statement of policy.*
20.100	38 CFR 20.306	*Rule 306. Legal holidays.*
20.200	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
	38 CFR 20.202	*Rule 202. Substantive Appeal.*
	38 CFR 20.300–20.306	See re filing Notices of Disagreement and Substantive Appeals.
20.201	38 CFR 20.1101	*When decisions of the Board become final.*
20.202	38 CFR 19.29	*Statement of the Case.*
	38 CFR 19.31	*Supplemental Statement of the Case.*
20.301	38 CFR 20.500	*Rule 500. Who can file an appeal in simultaneously contested claims.*
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.302	38 CFR 20.501	*Rule 501. Time limits for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case in simultaneously contested claims.*
20.303	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.503	*Rule 503. Extension of time for filing a Substantive Appeal in simultaneously contested claims.*
20.305	38 CFR 20.306	*Rule 306. Legal holidays.*
20.400	38 CFR 19.50–19.53	See also re administrative appeals.
20.401	38 CFR 19.50–19.53	See also re administrative appeals.
	38 CFR 20.302–20.306	See re time limits for perfecting an appeal.
	38 CFR 20.501, 20.503	See re time limits for perfecting an appeal in simultaneously contested claims.
20.500	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.501	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.502	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.503	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*

APPENDIX A TO PART 20—CROSS-REFERENCES—Continued

Sec.	Cross-reference	Title of cross-referenced material or comment
20.504	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.600	38 CFR 14.626 et seq	See also re representation.
	38 CFR 20.602	*Rule 602. Representation by recognized organizations.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.605	*Rule 605. Other persons as representative.*
20.602	38 CFR 14.628	*Recognition of organizations.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.603	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.604	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.605	38 CFR 14.630	*Authorization for a particular claim.*
	38 CFR 14.631	*Powers of attorney.*
	38 CFR 20.100	*Rule 100. Name, business hours, and mailing address of the Board.*
	38 CFR 20.607	*Rule 607. Revocation of a representative's authority to act.*
	38 CFR 20.608	*Rule 608. Withdrawal of services by a representative.*
	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.606	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
20.607	38 CFR 14.631(d)	See also re revocation of powers of attorney.
20.609	38 CFR 14.629	*Requirements for accreditation of representatives, agents, and attorneys.*
	38 CFR 20.603	*Rule 603. Representation by attorneys-at-law.*
	38 CFR 20.604	*Rule 604. Representation by agents.*
	38 CFR 20.606	*Rule 606. Legal interns, law students and paralegals.*
	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.610	38 CFR 20.609	*Rule 609. Payment of representative's fees in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*
20.611	38 CFR 1.525(d), 14.631(e)	See also re continuation of authority conferred by powers of attorney upon the death of a claimant.
20.700	38 CFR 20.1003	*Hearings on reconsideration.*
20.702	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs facilities.*
	38 CFR 20.713	*Rule 713. Hearings in simultaneously contested claims.*
20.703	38 CFR 20.201	*Rule 201. Notice of Disagreement.*
20.704	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.*
20.706	38 CFR 20.700(c)	See also re the presiding Member's role in the conduct of hearings.
	38 CFR 20.708	*Rule 708. Prehearing conference.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
20.707	38 CFR 19.11	*Reconsideration Section.*
20.708	38 CFR 20.606(d)	See re the prehearing conference required when a legal intern, law student, or paralegal is to participate in a hearing held before a traveling Section of the Board.
20.709	38 CFR 19.37	*Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.*
20.710	38 CFR 20.711	*Rule 711. Subpoenas.*
20.711	38 CFR 2.1	See for further information on subpoenas, including action to be taken in the event of noncompliance.
20.712	38 CFR 20.610	*Rule 610. Payment of representative's expenses in proceedings before Department of Veterans Affairs field personnel and before the Board of Veterans' Appeals.*

APPENDIX A TO PART 20—CROSS-REFERENCES—Continued

Sec.	Cross-reference	Title of cross-referenced material or comment
20.713	38 CFR 20.702	*Rule 702. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals in Washington, DC, and by agency of original jurisdiction personnel acting on behalf of the Board of Veterans' Appeals at field facilities.*
	38 CFR 20.704	*Rule 704. Scheduling and notice of hearings conducted by traveling Sections of the Board of Veterans' Appeals at Department of Veterans Affairs facilities.*
20.715	38 CFR 20.706	*Rule 706. Functions of the presiding Member.*
20.800	38 CFR 20.304	*Rule 304. Filing additional evidence does not extend time limit for appeal.*
	38 CFR 20.709	*Rule 709. Procurement of additional evidence following a hearing.*
	38 CFR 20.1304	*Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.*
20.901	38 CFR 14.507	See re opinions of the General Counsel of the Department of Veterans Affairs.
20.903	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*
20.1000	38 CFR 20.1001	*Rule 1001. Motion for reconsideration.*
	38 CFR 20.1002	*Rule 1002. Review and disposition of motion for reconsideration.*
	38 CFR 20.1003	*Rule 1003. Hearings on reconsideration.*
20.1001	38 CFR 20.1000	*Rule 1000. When reconsideration is accorded.*
	38 CFR 20.1002	*Rule 1002. Review and disposition of motion for reconsideration.*
	38 CFR 20.1003	*Rule 1003. Hearings on reconsideration.*
20.1002	38 CFR 20.1000	*Rule 1000. When reconsideration is accorded.*
	38 CFR 20.1001	*Rule 1001. Motion for reconsideration.*
	38 CFR 20.1003	*Rule 1003. Hearings on reconsideration.*
20.1003	38 CFR 20.700–20.717	See for further information on hearings.
	38 CFR 20.1000	*Rule 1000. When reconsideration is accorded.*
	38 CFR 20.1001	*Rule 1001 Motion for reconsideration.*
	38 CFR 20.1002	*Rule 1002. Review and disposition of motion for reconsideration.*
20.1100	38 CFR 20.1101	*When decisions of the Board become final.*
20.1101	38 CFR 20.1100	*Finality of decisions of the Board.*
20.1102	38 CFR 20.905	*Rule 905. Correction of harmless error in the record.*
20.1105	38 CFR 3.156	*New and material evidence.*
	38 CFR 20.1304(b)(1)	See re request for a personal hearing or submission of additional evidence more than 90 days after a case has been certified to the Board of Veterans' Appeals as possible basis for a reopened claim.
20.1106	38 CFR 3.22(a)(2)	See re correction of a rating, based on clear and unmistakable error, after a veteran's death in cases involving claims for benefits under the provisions of 38 U.S.C. 1318.
20.1300	38 CFR 1.500–1.527	See re the release of information from Department of Veterans Affairs claimant records.
	38 CFR 1.550–1.559	See re the release of information from Department of Veterans Affairs records other than claimant records.
	38 CFR 1.575–1.584	See re safeguarding personal information in Department of Veterans Affairs records.
	38 CFR 20.1301	*Rule 1301 Disclosure of information.*
20.1301	38 CFR 1.577	*Access to records.*
20.1302	38 CFR 20.611	*Rule 611. Continuation of representation following death of a claimant or appellant.*
20.1304	38 CFR 3.103(c) and 20.700–20.717	See also re hearings.
	38 CFR 3.156	*New and material evidence.*
	38 CFR 3.160(e)	*Reopened claim.*
	38 CFR 20.305	*Rule 305. Computation of time limit for filing.*
	38 CFR 20.306	*Rule 306. Legal holidays.*

[FR Doc. 92–1970 Filed 1–31–92; 8:45 am]
BILLING CODE 8320–01–M

federal register

Monday
February 3, 1992

Part III

Department of the Interior

Bureau of Indian Affairs

Pine River Indian Irrigation Project, CO; 1992 Operation and Maintenance Rates; Final Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pine River Indian Irrigation Project, CO

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Final notice of 1992 Operation and Maintenance Rates.

SUMMARY: The purpose of this notice is to establish the assessment rates for operating and maintaining the Pine River Indian Irrigation Project for 1992 and subsequent years until changed. The assessment rates are based on a prepared estimate of the cost of normal operations and maintenance of the irrigation project. Normal operations and maintenance is defined as the average per acre cost of all activities involved in delivering irrigation water including labor, materials, equipment and services.

EFFECTIVE DATE: This public notice will become effective on March 1, 1992, for the 1992 and subsequent irrigation seasons and remains in effect until changed.

FOR FURTHER INFORMATION CONTACT: Albuquerque Area Director, Albuquerque Area Office, Bureau of Indian Affairs, P.O. Box 26567, Albuquerque, New Mexico 87125–6567, telephone FTS 474–3171; commercial (505) 766–3171.

Authority: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583, 25 U.S.C. 385).

This notice of final operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary-Indian Affairs by the Secretary of the Interior in 209 DM8 and redelegated by the Assistant Secretary-Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of part 171, subchapter H, chapter I, of title 25 of the Code of Federal Regulations, which provide for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information of the Pine River Indian Irrigation Project for the period from March 1, 1992, until changed.

SUPPLEMENTARY INFORMATION: A notice of increase with an analysis of costs of operation and maintenance of the Pine River Indian Irrigation Project was mailed to individual waterusers on October 21, 1991, and further explained to the project waterusers at a general meeting conducted on November 15, 1991. The notice and analysis was presented to the Southern Ute Tribal Council on November 15 and December 19, 1991, and further publically posted in three conspicuous locations on the Southern Ute Indian Reservation.

Basic Assessment

The basic annual per acre assessment for operation and maintenance against the irrigable lands to which water can be delivered under the Pine River Irrigation Project in Colorado is hereby fixed for the year 1992 and thereafter until further notice as follows:

1. Project Operations and Maintenance.....$7.25 per acre
2. Vallecito Reservoir Operation and Maintenance.....$1.25 per acre
3. Minimum charges for any tract.....$25.00

Payment

The annual operation and maintenance charge shall become due and payable on April 1st of each year and continued in effect until further notice. Water will not be delivered to land until the assessment has been paid or arrangements have been made under 25 CFR, Part 171.17, Delivery of Water.

Interest and Penalty

To all charges assessed against project lands, and those leased Indian lands remaining unpaid on May 1, following the due date, the Project will assess interest, penalty and administrative charges in accordance with 4 CFR, part 102 and 42 BIAM, supplement 3. An administrative processing fee of ten dollars ($10.00) shall be added to the total charge each time an overdue payment notice is prepared and mailed by the Project. The administrative fee shall not be charged on the original billing.

Period Covered

Assessment rates are set for the 1992 and thereafter until changed.

Dated: January 24, 1992.

Sidney L. Mills,

Albuquerque Area Director.

[FR Doc. 92–2450 Filed 1–31–92; 8:45 am]

BILLING CODE 4310–02–M

federal register

Monday
February 3, 1992

Part IV

Department of the Interior

Bureau of Land Management

43 CFR Public Land Order 6921

Opening of Land, Under Section 24 of the Federal Power Act, in the Secretarial Order Dated July 30, 1909, Which Established Powersite Reserve No. 32; Colorado; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6921

[CO-932-4214-10; COC-28576]

Opening of Land, Under Section 24 of the Federal Power Act, in the Secretarial Order Dated July 30, 1909, Which Established Powersite Reserve No. 32; Colorado

AGENCY: Bureau of Land Management, Colorado.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of section 24 of the Federal Power Act, 9.48 acres of National Forest System land withdrawn by a Secretarial Order which established the Bureau of Land Management's Powersite Reserve No. 32. This action will permit consummation of a pending Forest Service land exchange and retain the power rights to the United States. The land has been and continues to be open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: February 3, 1992.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1988), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–536, it is ordered as follows:

1. At 9 a.m. on February 3, 1992, the following described National Forest System land withdrawn by an Executive Order dated July 30, 1909, which established Powersite Reserve No. 32, will be open to disposal by land exchange subject the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission in determination DVCO–536, and subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable law, and other segregations of record:

Sixth Principal Meridian

Arapaho National Forest

T. 4 S., R. 78 W.,

Sec. 9, lots 7, 8, and 9.

The area described contains 9.48 acres in Summit County.

Dated: January 29, 1992.

Dave O'Neal

Assistant Secretary of the Interior.

[FR Doc. 92–2636 Filed 1–31–92; 9:02 am]

BILLING CODE 4310-JB-M

federal register

Monday
February 3, 1992

Part V

International Trade Commission

Tuna: Current Issues Affecting the U.S. Industry; Change in Time of Hearing; Notice

INTERNATIONAL TRADE COMMISSION

[Inv. 332-313]

Tuna: Current Issues Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Change in time of hearing.

FOR FURTHER INFORMATION CONTACT: Gretchen Kipp or Jacqueline Hawkins at 205-1808 or 205-1816. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commisson should contact the Office of the Secretary at 205-2000.

SUPPLEMENTARY INFORMATION: In a notice issued January 9, 1992 the Commission announced a public hearing in this investigation to begin at 9:30 a.m. (Pacific Standard Time) that time has been changed and the hearing will begin at 8:30 a.m. (Pacific Standard Time).

Authority: Section 332 of the Tariff Act of 1930, as amended.

By order of the Commission.

Issued: January 30, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-2713 Filed 1-31-92; 10:43 am]

BILLING CODE 7020-02-M

Reader Aids

Federal Register

Vol. 57, No. 22

Monday, February 3, 1992

INFORMATION AND ASSISTANCE

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-013-00001-3)	$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	(869-013-00002-1)	14.00	[1] Jan. 1, 1991
4	(869-013-00003-0)	15.00	Jan. 1, 1991
5 Parts:			
1-699	(869-013-00004-8)	17.00	Jan. 1, 1991
700-1199	(869-013-00005-6)	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved)	(869-013-00006-4)	18.00	Jan. 1, 1991
7 Parts:			
0-26	(869-013-00007-2)	15.00	Jan. 1, 1991
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46-51	(869-013-00009-9)	17.00	Jan. 1, 1991
52	(869-013-00010-2)	24.00	Jan. 1, 1991
53-209	(869-013-00011-1)	18.00	Jan. 1, 1991
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300-399	(869-013-00013-7)	12.00	Jan. 1, 1991
400-699	(869-013-00014-5)	20.00	Jan. 1, 1991
700-899	(869-013-00015-3)	19.00	Jan. 1, 1991
900-999	(869-013-00016-1)	28.00	Jan. 1, 1991
1000-1059	(869-013-00017-0)	17.00	Jan. 1, 1991
1060-1119	(869-013-00018-8)	12.00	Jan. 1, 1991
1120-1199	(869-013-00019-6)	10.00	Jan. 1, 1991
1200-1499	(869-013-00020-0)	18.00	Jan. 1, 1991
1500-1899	(869-013-00021-8)	12.00	Jan. 1, 1991
1900-1939	(869-013-00022-6)	11.00	Jan. 1, 1991
1940-1949	(869-013-00023-4)	22.00	Jan. 1, 1991
1950-1999	(869-013-00024-2)	25.00	Jan. 1, 1991
2000-End	(869-013-00025-1)	10.00	Jan. 1, 1991
8	(869-013-00026-9)	14.00	Jan. 1, 1991
9 Parts:			
1-199	(869-013-00027-7)	21.00	Jan. 1, 1991
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10 Parts:			
0-50	(869-013-00029-3)	21.00	Jan. 1, 1991
51-199	(869-013-00030-7)	17.00	Jan. 1, 1991
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300-499	(869-013-00038-2)	17.00	Jan. 1, 1991
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600-End	(869-013-00040-4)	19.00	Jan. 1, 1991
13	(869-013-00041-2)	24.00	Jan. 1, 1991
14 Parts:			
1-59	(869-013-00042-1)	25.00	Jan. 1, 1991
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1200-End	(869-013-00046-3)	13.00	Jan. 1, 1991
15 Parts:			
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150-999	(869-013-00051-0)	14.00	Jan. 1, 1991
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1-199	(869-013-00061-7)	28.00	Apr. 1, 1991
200-End	(869-013-00062-5)	9.50	Apr. 1, 1991
20 Parts:			
1-399	(869-013-00063-3)	16.00	Apr. 1, 1991
400-499	(869-013-00064-1)	25.00	Apr. 1, 1991
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21 Parts:			
1-99	(869-013-00066-8)	12.00	Apr. 1, 1991
100-169	(869-013-00067-6)	13.00	Apr. 1, 1991
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800-1299	(869-013-00073-1)	18.00	Apr. 1, 1991
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22 Parts:			
1-299	(869-013-00075-7)	25.00	Apr. 1, 1991
300-End	(869-013-00076-5)	18.00	Apr. 1, 1991
23	(869-013-00077-3)	17.00	Apr. 1, 1991
24 Parts:			
0-199	(869-013-00078-1)	25.00	Apr. 1, 1991
200-499	(869-013-00079-0)	27.00	Apr. 1, 1991
500-699	(869-013-00080-3)	13.00	Apr. 1, 1991
700-1699	(869-013-00081-1)	26.00	Apr. 1, 1991
1700-End	(869-013-00082-0)	13.00	[5] Apr. 1, 1990
25	(869-013-00083-8)	25.00	Apr. 1, 1991
26 Parts:			
§§ 1.0-1-1.60	(869-013-00084-6)	17.00	Apr. 1, 1991
§§ 1.61-1.169	(869-013-00085-4)	28.00	Apr. 1, 1991
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§§ 1.301-1.400	(869-013-00087-1)	17.00	Apr. 1, 1991
§§ 1.401-1.500	(869-013-00088-9)	30.00	Apr. 1, 1991
§§ 1.501-1.640	(869-013-00089-7)	16.00	Apr. 1, 1991
§§ 1.641-1.850	(869-013-00090-1)	19.00	[5] Apr. 1, 1990
§§ 1.851-1.907	(869-013-00091-9)	20.00	Apr. 1, 1991
§§ 1.908-1.1000	(869-013-00092-7)	22.00	Apr. 1, 1991
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§§ 1.1401-End	(869-013-00094-3)	24.00	Apr. 1, 1991
2-29	(869-013-00095-1)	21.00	Apr. 1, 1991
30-39	(869-013-00096-0)	14.00	Apr. 1, 1991
40-49	(869-013-00097-8)	11.00	Apr. 1, 1991
50-299	(869-013-00098-6)	15.00	Apr. 1, 1991
300-499	(869-013-00099-4)	17.00	Apr. 1, 1991
500-599	(869-013-00100-1)	6.00	[5] Apr. 1, 1990

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600–End	(869–013–00101–0)	6.50	Apr. 1, 1991
27 Parts:			
1–199	(869–013–00102–8)	29.00	Apr. 1, 1991
200–End	(869–013–00103–6)	11.00	Apr. 1, 1991
28	(869–013–00104–4)	28.00	July 1, 1991
29 Parts:			
0–99	(869–013–00105–2)	18.00	July 1, 1991
100–499	(869–013–00106–1)	7.50	July 1, 1991
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900–1899	(869–013–00108–7)	12.00	July 1, 1991
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
1911–1925	(869–013–00111–7)	9.00	[6] July 1, 1989
1926	(869–013–00112–5)	12.00	July 1, 1991
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30 Parts:			
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200–699	(869–013–00115–0)	15.00	July 1, 1991
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200–End	(869–013–00118–4)	20.00	July 1, 1991
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1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–013–00121–4)	26.00	July 1, 1991
630–699	(869–013–00122–2)	14.00	July 1, 1991
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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February 12	February 27	March 13	March 30	April 13	May 12
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February 20	March 6	March 23	April 6	April 20	May 20
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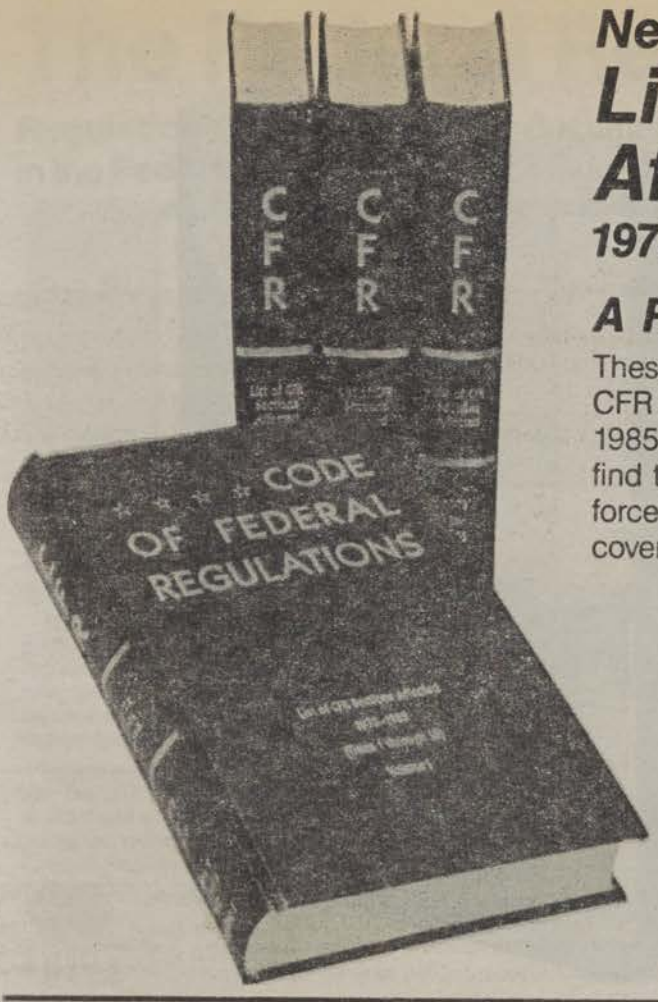

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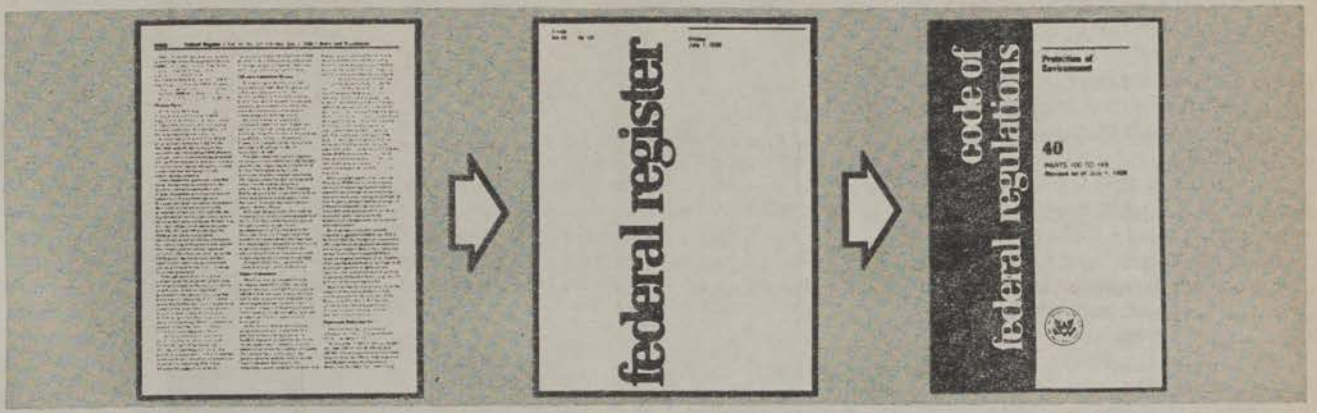

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